Compliance Examination Handbook

DSC Compliance Examination Handbook Table of Contents

Handbook Introduction	**Tab I**
Introduction	I-1.1
Organization of the Handbook	I-1.1
How to Use the Handbook	I-1.2
Abbreviations	I-2.1
Index	I-3.1
Compliance Examinations	**Tab II**
Overview of Compliance Examinations	II–1.1
Compliance Management System	II-2.1
Pre-Examination Planning	II-3.1
Review and Analysis	II-4.1
Communicating Findings	II-5.1
Documenting the Examination	II-6.1
Investigations and Visitations	II-7.1
Enforcement Actions	II-8.1
Truth in Lending (TIL) Restitution Verification	II-9.1
Appeals	II-10.1
Examination and Visitation Frequency	II-11.1
Consumer Compliance Rating System	II-12.1
Examination Templates	**Tab III**
Risk Profile and Scope Memorandum	III–1.1
Interview Sheet	III-2.1
Compliance Information and Disclosure Request	III-3.1
Entry Letters	III-4.1
Fair Lending Laws and Regulations	**Tab IV**
Fair Lending Laws and Regulations	IV–1.1
Appendices	IV-2.1
Compliance Lending Issues	**Tab V**
Truth in Lending Act	V-1.1
Determining Whether TIL Restitution is Required	V-2.1
Real Estate Settlement Procedures Act (RESPA)	V-3.1
Homeownership Counseling Act	V-4.1
Homeowners Protection Act	V-5.1
Flood Disaster Protection	V-6.1
Equal Credit Opportunity Act (ECOA) Regulation	V-7.1
Fair Housing Act (FHAct)	V-8.1
Home Mortgage Disclosure Act	V-9.1
Consumer Leasing	V-10.1
Compliance Depository Issues	**Tab VI**
Expedited Funds Availability Act	VI-1.1
Electronic Fund Transfer Act	VI–2.1
Truth in Savings Act	VI-3.1
Interest on Deposits — Part 329	VI-4.1

Abusive Practices **Tab VII**

Federal Trade Commission Act, Section 5 Unfair or Deceptive Acts or Practices VII–1.1

Credit Practices Rule (Regulation AA) VII-2.1

FTC Rule – Preservation of Claims and Defenses VII-3.1

Fair Debt Collection Practices Act VII-4.1

Privacy and Consumer Information **Tab VIII**

Gramm-Leach-Bliley Act (Privacy of Consumer Financial Information) VIII–1.1

Children's Online Privacy Protection Act (COPPA) VIII-2.1

Right to Financial Privacy Act VIII-3.1

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 VIII-4.1

Telephone Consumer Protection Act VIII-5.1

Fair Credit Reporting Act VIII-6.1

Retail Sales **Tab IX**

Retail Investment Sales IX–1.1

Retail Insurance Sales IX-2.1

Other Compliance Issues **Tab X**

Advertisement of Membership—Part 328 of FDIC Rules and Regulations X–1.1

Section 42 of the Federal Deposit Insurance (FDI) Act—Branch Closings X-2.1

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) X-3.1

Prohibition Against Use of Interstate Branches Primarily for Deposit Production X-4.1

Community Reinvestment Act **Tab XI**

Community Reinvestment Act XI–1.1

Small Bank XI–1.1

Intermediate Small Bank XI-2.1

Large Bank XI-3.1

Wholesale/Limited Purpose Institution XI-4.1

Institutions with Strategic Plans XI-5.1

CRA Ratings System XI-6.1

CRA Sunshine – Disclosure and Reporting of CRA-Related Agreements XI-7.1

Community Contacts XI-8.1

Sampling Guidelines CRA XI-9.1

CRA Performance Evaluation Templates **Tab XII**

Small Institution XII–1.1

Intermediate Small Institution, Intrastate XII-2.1

Intermediate Small Institution, Interstate XII-3.1

Large Institution XII-4.1

Strategic Plan XII-5.1

I. Handbook Introduction

Introduction

The Compliance Examination Handbook (Handbook) is designed as a reference tool for Compliance examination staff to use when conducting Compliance and Community Reinvestment Act (CRA) examinations and other supervisory activities. The detailed procedures presented in the Handbook are not intended to replace sound judgment and discretion on the part of examination staff. Instead, the materials are designed to promote uniformity in the examination process and as a reference tool for examiners.

Organization of the Handbook

The Handbook is divided into 12 sections as described below and is organized so that information is presented based on regulation rather than process. The Handbook incorporates examination policies and procedures in effect as of June 2006. The Handbook begins with the risk focused, process oriented examination procedures (Section II) and sample templates to use during the examination (Section III). Sections IV through X cover specific rules and regulations divided into general topics. The Handbook concludes by covering the Community Reinvestment Act (CRA) examination (Section XI) and samples of the various performance evaluations (Section XII) to be used. Each Section of the Handbook is discussed below.

- ***I – Handbook Introduction*** – This section includes information on how to use the Handbook as well as a list of common abbreviations and an index of key topics.
- ***II –Compliance Examinations*** – This section covers the recently revised Compliance Examination process beginning with pre-examination planning through determining the rating. Also included is information on documenting examination findings, enforcement actions, appeals, visitations, and investigations. This section is new since the last manual update and is the most updated version (2005) of the risk-focused, process-oriented examination procedures.
- ***III – Compliance Examination Templates & Samples*** – This section provides sample forms and templates to be used during Compliance Examinations, including a model entry letter, a scoping memorandum, an interview sheet, and a Compliance Information Document Request. This section is new since the last manual update and includes the revisions made in June 2006.
- ***IV – Fair Lending Laws and Regulations*** –This section addresses the procedures for evaluating compliance with the Fair Lending provisions of Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHAct). Examination procedures (2004) and checklists are included. Procedures for evaluating compliance with the technical, non-discriminatory provisions of ECOA and FHAct are covered in Section V.
- ***V – Compliance Lending Issues*** –This section covers lending related topics including Truth in Lending (2003), Real Estate Settlement Procedures (2004), Homeowners Counseling (2003), Homeowners Protection (2003), Flood Insurance (1996), Equal Credit Opportunity and Fair Housing checklists (2006), Home Mortgage Disclosures (2004), and Consumer Leasing (2001). Examination procedures and checklists are included.
- ***VI – Compliance Depository Issues*** –This section covers deposit function related topics including Electronic Funds including Check 21 (2003), Electronic Funds Transfers (2001), Truth in Savings (2006), and Interest on Deposits (1991). Examination procedures and checklists are included.
- ***VII – Abusive Practices*** – This section covers issues relating to abusive practices including Unfair and Deceptive Acts (2005), Credit Practices, Preservation of Claims of Consumer Claims and Defenses, and Fair Debt Collection (1997). Examination procedures and checklists are included.
- ***VIII –Privacy and Consumer Information*** – This section covers issues relating to privacy issues including Gramm-Leach-Bliley Privacy of Consumer Financial Information (2001), Children's Online Privacy Protection (2000), Right to Financial Privacy (1989), Controlling the Assault of Non-Solicited Pornography and Marketing (2005), Telephone Consumer's Protection (2005), and Fair Credit Reporting (2006). Examination procedures and checklists are included.
- ***IX – Retail Sales*** – This section covers retail sales to consumers for Investment and Insurance Sales (2005). This topic is often referred to as Nondeposit Products or NDP. Examination procedures and checklists are included.
- ***X – Other Compliance Issues*** – This section covers Compliance Examination related topics not included in the prior sections. Included are issues relating to Membership Advertising (1992), Branch Closings (1991), E-Sign (2001) and Interstate Branching (2003). Examination procedures and checklists are included.
- ***XI – Community Reinvestment Act (CRA)*** – This section covers CRA related examination procedures (2006) for all types and asset sizes of institutions as well as the CRA Sunshine Act. Examination procedures and checklists are included.
- ***XII – Community Reinvestment Act Performance Evaluation Templates*** – This section provides samples of Performance Evaluations (2006) for all sizes and types of institutions under CRA.

How to Use the Handbook

The Handbook incorporates existing policies and procedures, adding information, job aids, and references that may assist the reader. Each Section begins with a detailed Table of Contents followed by the various rules and regulations related to the topic of the section (for example, the Lending section (V) contains subsections for Truth in Lending, RESPA and other lending related rules and regulations). Each subtopic includes pertinent background material, examination procedures, references and job aids to assist the examiner in the examination process. Each rule and regulation covered in the Sections is included independently in the Handbook and can be readily removed, replaced, and updated. In addition, the electronic version is broken into corresponding sections and topics. When new examination policies and procedures are released, the examiner can readily add these to the Handbook in the appropriate section. The on-line Handbook will be revised to reflect the addition. This same procedure should be followed when any current section or topic is revised or procedures updated. Insert the revision into the Handbook and remove any outdated materials.

NOTE: The reference links are provided as a resource and are accurate at date of publication, but may be subject to change without notice. If this occurs, it is recommended that the reader use the reference title and link information as a base to search for the new link location.

Abbreviations

ACH – Automated Clearing House

APR – Annual Percentage Rate

APY – Annual Percentage Yield

ARM – Adjustable Rate Mortgage

ATM – Automated Teller Machine

BOD – Board of Directors

BPMI – Borrower-Paid Private Mortgage Insurance

CAA – Community Action Agencies

CAN-SPAM – Controlling the Assault of Non-Solicited Pornography and Marketing Act

CDC – Community Development Corporation

CFR – Code of Federal Regulations

CIDR – Compliance Information and Disclosure Request

CLA – Consumer Leasing Act

CMP – Civil Money Penalty

CMS – Compliance Management System

COPPA – Children's Online Privacy Protection Act

CRA – Community Reinvestment Act

DSC – Division of Supervision and Consumer Protection

DOJ – Department of Justice

E-Sign – Electronic Signatures in Global and National Commerce Act

EBT – Electronic Benefits Transfer

EC – Economic Community

ECOA – Equal Credit Opportunities Act

EDA – Economic Development Administration

EDC – Economic Development Corporation

EFTA – Electronic Funds Transfer Act

EFA – Expedited Funds Availability

EIC – Examiner-In-Charge

EZ – Empowerment Zone

FC – Finance Charge

FCC – Federal Communications Commission

FCRA – Fair Credit Reporting Act

FDCPA – Fair Debt Collection Practices Act FDPA – Flood Disaster Protection Act

FDI Act – Federal Deposit Insurance Act

FDIC – Federal Deposit Insurance Corporation

FEMA – Federal Emergency Management Act

FFIEC – Federal Financial Institution Examination Council

FHA – Federal Housing Administration

FHAct – Fair Housing Act

FHLB – Federal Home Loan Bank

FHLMC – Federal Home Loan Mortgage Company

FIAP – Formal and Informal Actions Procedures

FNMA – Federal National Mortgage Association

FO – Field Office

FOIA – Freedom of Information Act

FRB – Federal Reserve Board

FS – Field Supervisor a/k/a FOS – Field Office Supervisor

FTC – Federal Trade Commission

GENESYS – General Examination System

GFE – Good Faith Estimate

GLBA – Gramm-Leach-Bliley Act

GNMA – Government National Mortgage Association

HMDA – Home Mortgage Disclosure Act

HOCA – Homeowners Counseling Act

HOEPA – Home Ownership Equity Protection Act

HOPA – Homeowners Protection Act

HUD – Department of Housing and Urban Development

IAP – Institution Affiliated Party

IBBEA – Interstate Banking annd Branching Efficiency Act

IRA – Individual Retirement Account

IRS – Internal Revenue Service

LAR – Loan Application Register

LPMI – Lenderer-Paid Private Mortgage Insurance

LPO – Loan Production Office

LTD – Loan to Deposit Ratio

LTV – Loan to Value

MD – Metropolitan Division

MICR – Magnetic Ink Character Recognition

MMDA – Money Market Demand Account

MSA – Metropolitan Statistical Area

MSD – Material Supervisory Determination

NASD – National Association of Securities Dealers

NCUA – National Credit Union Administration

NDP – Non-Deposit Products

NFIP – National Flood Insurance Program

NGEP – Nongovernmental Entity or Person

NOW – Negotiable Order of Withdrawal

OCC – Office of the Comptroller of the Currency

OMBE – Office of Minority Enterprise

OTS – Office of Thrift Supervision

PCCD – Preservation of Consumers' Claims and Defenses

PEP - Pre-Examination Planning

PMI – Private Mortgage Insurance

POS – Point of Sale

RE – Review Examiner

RESPA – Real Estate Settlement Procedures

RFPA - Right to Financial Privacy

RO – Regional Office

RM – Risk Management

RO – Regional Office

ROE – Report of Examination

RPSM – Risk Profile Scope Memorandum

SARC – Supervisory Action Review Committee

SBA – Small Business Association

SBCD – Small Business Development Center

SBIC – Small Business Investment Corporation

SEC – Securities Exchange Commission

SFHA – Special Flood Hazard Area

SOURCE – System of Uniform Reporting of Compliance and CRA Examinations

SPCP – Special Purpose Credit Program

SSBIC – Specialized Small Business Investment Corporation

STARS – Specialized Tracking and Reporting Systems

TCPA – Telephone Consumer Protection Act

TILA – Truth in Lending Act

TISA – Truth in Savings Act

UBPR – Uniform Bank Performance Report

UDAP – Unfair or Deceptive Act or Practices

USC – United States Code

VA – Veteran's Affairs

Index

A

Adverse Action
II-6.2, IV–1.3, IV-2.11, IV-2.19, VIII-6.2, VIII-6.5, VIII-6.8, VIII-6.13, VIII-6.17

Adverse Impact
IV–1.21, IV–1.22, IV-2.15, IV-2.23, IV-2.24

Advertisement
II-4.4, IV-2.3, V-8.2, V-10.2, V-10.3, V-10.8, VI-3.8, VI-3.9, VII–1.2, VII–1.3, VIII-4.1, VIII-4.2, VIII-4.3, VIII-4.5, VIII-5.1, VIII-5.3, VIII-5.5

Affiliate
II-4.1, IV–1.5, IV–1.7, IV–1.14, IV–1.15, VIII-6.1, VIII-6.3, VIII-6.7, VIII-6.8, VIII-6.10, VIII-6.11, VIII-6.17, VIII-6.25, XI-3.3, XI-7.3, XI-7.4, XI-7.5

Annual Percentage Rate
I-2.1, II-2.3, V-1.2, V-1.5, V-1.8, V-1.9, V-1.10, V-1.11, V-1.20, V-1.21, V-1.23, V-2.1, V-9.3, V-10.2, V-10.7
See also *APR*

Appeal
II-10.1

Application
I-2.2, II–1.1, II-2.3, II-3.1, II-5.5, IV–1.1, IV–1.2, IV–1.6, IV–1.7, IV–1.8, IV–1.10, IV–1.11, IV–1.12, IV–1.13, IV–1.16, IV–1.18, IV–1.20, IV-2.1, IV-2.2, IV-2.5, IV-2.6, IV-2.11, IV-2.13, IV-2.15, IV-2.16, IV-2.17, IV-2.19, IV-2.22, IV-2.23, IV-2.24, IV-2.27, V-1.5, V-1.7, V-1.10, V-1.12, V-1.21, V-1.24, V-1.25, V-1.26, V-1.27, V-1.32, V-2.1, V-3.2, V-3.3, V-3.4, V-3.6, V-3.7, V-3.8, V-3.9, V-3.11, V-3.12, V-3.13, V-5.4, V-6.1, V-7.2, V-7.3, V-7.4, V-7.5, V-7.6, V-7.7, V-7.8, V-7.10, V-8.1, V-9.1, V-9.2, V-9.3, V-9.4, V-9.5, V-9.6, V-9.7, V-9.8, V-9.12, V-9.13, V-9.14, VI–2.7, VI-3.1, VII-4.4, VIII–1.2, VIII–1.6, VIII–1.15, VIII-5.1, VIII-6.2, VIII-6.7, VIII-6.8, VIII-6.9, VIII-6.15, VIII-6.16, VIII-6.23, IX–1.12, IX-2.3, IX-2.8, IX-2.9, IX-2.10, XI–1.1, XI-7.1, XI-8.10

APR
II-5.5, V-1.1, V-1.3, V-1.5, V-1.7, V-1.8, V-1.9, V-1.10, V-1.11, V-1.12, V-1.13, V-1.19, V-1.20, V-1.21, V-1.22, V-1.24, V-1.25, V-1.26, V-1.27, V-1.28, V-1.30, V-1.32, V-2.1, V-2.2, V-9.3, V-9.6, V-9.13
See also *Annual Percentage Rate*

Assessment Area
IV–1.4, IV–1.7, IV–1.17, IV–1.18, XI–1.2, XI–1.3, XI–1.7, XI-2.2, XI-2.3, XI-2.4, XI-3.2, XI-4.2, XI-8.2

Audit
II–1.1, II–1.2, II-2.1, II-2.2, II-2.4, II-4.2, II-4.4, II-4.5, II-4.8, II-5.3, II-5.4, II-6.1, II-12.1, II-12.2, IV–1.10, IV-2.9, IV-2.21, V-1.23, V-1.24, V-5.6, V-7.1, V-9.5, V-9.8, VI-1.17, VI-1.21, VIII–1.2, VIII–1.6, VIII–1.25, VIII-2.1, VIII-4.3, VIII-4.4, VIII-5.2, VIII-5.3, VIII-5.4, VIII-6.3, IX–1.4, IX–1.8, IX–1.20, IX-2.4, IX-2.11

B

Branch Closing
II-4.6, X-2.1

C

Check 21
I-1.1, VI-1.1, VI-1.20, VI-1.21, VI-1.22, VI-1.23

Children's Online Privacy Protection Act
II-4.4, VIII-2.1
See also *COPPA*

CIDR
I-2.1, II-3.1, II-3.2, IX-2.2
See also *Compliance Information and Disclosure Request*

Civil Rights
II-12.1, XI-8.5

Closed-End Credit
V-1.3, V-1.5, V-1.10, V-1.23, V-1.24, V-1.27, V-1.29

CMS
II–1.2, II-4.1, II-4.2, II-4.3, II-4.4, II-4.8, II-5.3, II-6.1, II-6.2
See also *Compliance Management System*

Commercial Lending
IV–1.9, IV–1.10, IV–1.16, XI-7.2

Community Contact
IV–1.8, XI–1.2, XI-2.2, XI-3.2, XI-8.1, XI-8.6, XI-8.11

Community Reinvestment Act
II–1.1, II-5.2, II-5.4, V-9.2, VII–1.7, X-4.3, X-4.5, XI–1.1, XI-7.1, XI-7.6, XI-7.7
See also *CRA*

Complaint
II–1.1, II-2.2, II-2.3

Compliance Information and Disclosure Request
I-2.1, III-3.1
See also *CIDR*

Compliance Management System
I-2.1, II–1.1, II–1.2, II–1.3, II-2.1, II-4.1, II-4.2, II-4.3, II-4.4, II-4.5, II-4.6, II-4.7, II-5.1, II-5.2, II-5.3, II-5.4, IV–1.3, IV–1.13, V-1.23, V-10.2, VII–1.4, VIII–1.6, IX–1.2, IX–1.4, IX–1.8, IX-2.1, IX-2.4
See also *CMS*

Compliance Request Letter
II-3.1, II-3.2, II-4.1

Consultation
II-4.9, II-5.1, II-6.2, II-7.1, II-8.1, IV–1.17, IV-2.29, VII–1.1, VII–1.4, VII–1.7, VIII-3.1, X-4.5, XI-5.1

Consumer Complaint
II-2.3, II-4.7, II-4.8, II-5.1, VII–1.4

Consumer Leasing
I-1.1, I-2.1, II-4.4, V-iii, V-1.1, V-10.1, V-10.2, V-10.4, V-10.5, VI–2.18, VI-3.4, X-3.1

Consumer Leasing Act
I-2.1, V-1.1, V-10.1, V-10.2, V-10.4, VI–2.18, VI-3.4

Consumer Report
VII–1.5, VIII–1.25, VIII-6.1, VIII-6.2, VIII-6.5, VIII-6.6, VIII-6.7, VIII-6.8, VIII-6.10, VIII-6.13, VIII-6.16, VIII-6.17, VIII-6.18, VIII-6.20, VIII-6.23

COPPA
I-2.1, VIII-2.1
See also *Children's Online Privacy Protection Act*

CRA
II-3.1, II-4.3, II-4.4, II-4.9, II-5.1, II-5.4, II-6.2, II-6.3, II-7.1, II-8.1, II-11.1, II-11.2, II-12.1, IV–1.4, IV–1.8, IV–1.10, IV–1.17, IV–1.18, IV–1.20, IV-2.2, IV-2.21, V-9.2, V-9.3, V-9.8, V-9.9, VIII-3.1, X-4.2, X-4.3, X-4.5, X-4.6, XI–1.1, XI–1.2, XI–1.4, XI–1.5, XI–1.6, XI–1.7, XI-2.1, XI-2.2, XI-2.3, XI-2.5, XI-2.7, XI-3.1, XI-3.2, XI-3.3, XI-3.4, XI-3.6, XI-3.8, XI-3.9, XI-4.1, XI-4.2, XI-4.3, XI-4.4, XI-4.5, XI-5.1, XI-5.2, XI-5.3, XI-5.4, XI-7.1, XI-7.2, XI-7.3, XI-7.6, XI-7.7, XI-7.8, XI-8.1, XI-9.1, XI-9.2, XI-9.4
See also *Community Reinvestment Act*

Credit Practices Rule
II-4.4, VII-i, VII-2.1, VII-2.2

Credit Report
IV–1.2, IV-2.12, V-1.5, V-1.7, V-1.13, V-1.33, V-1.19, VIII-6.15, VIII-6.21

Credit Scoring
IV–1.6, IV–1.7, IV–1.13, IV–1.21, IV–1.22, IV-2.11, IV-2.12

D

Denial
II-4.5, IV–1.5, IV–1.7, IV–1.8, IV–1.10, IV–1.11, IV–1.12, IV–1.13, IV–1.17, IV–1.22, IV-2.1, IV-2.5, IV-2.6, IV-2.11, IV-2.14, IV-2.15, IV-2.16, IV-2.17, IV-2.19, IV-2.23, IV-2.27, IV-2.28, V-7.6, V-7.8, V-9.1, V-9.2, V-9.3, V-9.12, V-9.13, VI-1.21, VIII-6.2

Department of Housing and Urban Development
I-2.2, II-6.2, IV–1.1, V-3.1, V-3.16, V-4.1, V-8.1, V-9.4, XI-8.4
See also *HUD*

Deposit Production
X-4.1, X-4.2, X-4.7

Disclosure Notice
VI-1.21, VII-2.1

Discrimination
II-4.5, II-7.1, II-12.2, IV–1.1, IV–1.2, IV–1.3, IV–1.4, IV–1.5, IV–1.6, IV–1.7, IV–1.8, IV–1.9, IV–1.10, IV–1.11, IV–1.12, IV–1.14, IV–1.15, IV–1.16, IV–1.17, IV–1.19, IV–1.21, IV–1.22, IV-2.2, IV-2.9, IV-2.11, IV-2.14, IV-2.16, IV-2.17, IV-2.23, IV-2.25, IV-2.29, V-7.1, V-7.2, V-8.1, V-9.1, VII–1.3, IX-2.6, XI–1.2, XI–1.5, XI-2.2, XI-2.7, XI-3.2, XI-3.8, XI-4.2, XI-4.3, XI-5.3, XI-8.10

Discriminatory Conduct
IV–1.4, IV–1.5, IV–1.9, IV–1.10, IV-2.9

Disparate Impact
IV–1.2, IV–1.3, IV–1.22, IV-2.11, VII–1.3

Disparate Treatment
II-4.5, IV–1.2, IV–1.7, IV–1.8, IV–1.10, IV–1.11, IV–1.12, IV–1.13, IV–1.14, IV–1.16, IV–1.17, IV–1.18, IV–1.19, IV–1.22, IV-2.1, IV-2.5, IV-2.6, IV-2.11, IV-2.13, IV-2.14, IV-2.15, IV-2.16, IV-2.23, IV-2.25, IV-2.27, IV-2.28

E

E-Sign
I-1.1, I-2.1, V-1.1, V-7.10, V-10.2, VI-3.3, X-3.1

ECOA
IV–1.1, IV–1.2, IV–1.3, IV–1.9, IV–1.15, IV–1.17, IV-2.1, IV-2.5, IV-2.6, IV-2.7, IV-2.16, IV-2.21, IV-2.25, IV-2.27, V-7.1, V-7.4, V-7.6, V-7.7, V-7.8, V-7.10, VII–1.3, VIII-6.2
See also *Equal Credit Opportunities Act*

EFA
I-2.1, VI-1.1, VI-1.12

EFTA
VI–2.1, VI–2.6, VI–2.7, VI–2.9
See also *Electronic Funds Transfer Act*

Electronic Banking
II-4.4, II-4.6, X-3.3

Electronic Funds Transfer Act
VI–2.18
See also *EFTA*

Enforcement Action
II–1.1, II-5.1, II-5.4, II-6.1, II-6.2, II-6.3, II-7.1, II-8.1, IV–1.22, V-2.2, V-5.7, VI-3.3, VII–1.1, IX–1.7, IX-2.11

Equal Credit Opportunities Act
I-2.1
See also *ECOA*

Escrow
V-1.13, V-1.23, V-3.1, V-3.4, V-3.5, V-3.6, V-3.7, V-3.9, V-3.10, V-3.14, V-3.15, V-3.16, V-5.9, V-6.4, V-6.5, V-6.7, V-6.9, V-6.10, V-6.11, V-6.14, VI-4.2, VII-4.1

Examiner Summary
II-4.3, II-6.1

Expedited Recredit
VI-1.1, VI-1.13, VI-1.14, VI-1.15, VI-1.20, VI-1.21, VI-1.22

F

Fair Credit Reporting Act
I-2.1, II-6.2, VIII–1.4, VIII–1.5, VIII–1.16, VIII-6.1, VIII-6.5, VIII-6.7, VIII-6.13, VIII-6.19, VIII-6.23, VIII-6.24
See also *FCRA*

Fair Debt Collection Practices Act
I-2.1, VII–1.1, VII–1.3, VII-4.1, VII-4.4, VII-4.5, VIII-6.1
See also *FDCPA*

Fair Housing Act
I-1.1, I-2.1, IV–1.1, IV–1.17, IV–1.20, IV-2.1, IV-2.5, IV-2.29, V-8.1, V-8.2, VII–1.3, XI–1.5, XI-3.8, XI-4.3, XI-5.3

Fair Lending
II–1.1, II–1.2, II-4.1, II-4.3, II-4.5, II-4.6, II-4.8, II-4.9, II-5.1, II-6.3, IV–1.1, IV–1.3, IV–1.4, IV–1.6, IV–1.10, IV–1.11, IV–1.13, IV–1.14, IV–1.22, IV-2.1, IV-2.6, IV-2.17, IV-2.12, IV-2.21, IV-2.22, IV-2.27, IV-2.29, V-7.1, V-7.11, V-8.1, V-8.2, VII–1.3

FCRA
VIII–1.16, VIII–1.25, VIII-6.1, VIII-6.2, VIII-6.3, VIII-6.5, VIII-6.6, VIII-6.7, VIII-6.8, VIII-6.10, VIII-6.11, VIII-6.13, VIII-6.14, VIII-6.16, VIII-6.17, VIII-6.18, VIII-6.19, VIII-6.20, VIII-6.21, VIII-6.23, VIII-6.24, VIII-6.25
See also *Fair Credit Reporting Act*

FDCPA
I-2.1, VII-4.1, VII-4.2, VII-4.3, VII-4.4, VII-4.5
See also *Fair Debt Collection Practices Act*

Federal Communications Commission
I-2.1, VIII-5.1, VIII-5.4

Federal Trade Commission
I-2.1, VII–1.1, VII–1.7, VII-3.1, VII-4.4, VIII-2.1, VIII-4.1, VIII-4.4, VIII-5.1, VIII-5.4, VIII-6.1, VIII-6.8, VIII-6.11, VIII-6.13, VIII-6.14, VIII-6.18, VIII-6.24, XI–1.5, XI-3.8, XI-4.3, XI-5.3
See also *FTC*

Finance Charge
I-2.1, V-1.2, V-1.3, V-1.5, V-1.7, V-1.8, V-1.9, V-1.10, V-1.11, V-1.12, V-1.13, V-1.19, V-1.20, V-1.21, V-1.22, V-1.23, V-1.24, V-1.25, V-1.27, V-1.28, V-1.34, V-2.1, V-2.2, V-6.6, V-6.10, VI–2.5

Flood Insurance
II-4.4, II-8.2, V-6.1, V-6.2, V-6.3, V-6.4, V-6.5, V-6.6, V-6.7, V-6.8, V-6.9, V-6.10, V-6.11, V-6.12, V-6.14, V-6.16

Forced Placement
V-6.3, V-6.5, V-6.6, V-6.8, V-6.9, V-6.10, V-6.11

FTC
I-2.1, V-10.4, VII-i, VII–1.1, VII–1.3, VII–1.4, VII–1.5, VII–1.7, VII–1.8, VII-3.1, VII-4.4, VIII–1.5, VIII-2.1, VIII-4.1, VIII-5.1, VIII-5.2, VIII-5.5, VIII-6.13, VIII-6.14, VIII-6.25
See also *Federal Trade Commission*

Furnishers
VIII-6.1, VIII-6.19, VIII-6.20, VIII-6.25

G

GENESYS
I-2.1, II-3.2

Geocoding
V-9.9, V-9.10, XI-7.8, XI-9.4

GFE
I-2.1, V-1.27, V-3.1, V-3.2, V-3.3, V-3.4, V-3.7, V-3.8, V-3.9, V-3.11, V-3.12, V-3.13
See also *Good Faith Estimate*

GLBA
I-2.1, II-11.1, VIII–1.1, VIII-6.7, VIII-6.8, IX–1.1, IX–1.4, IX-2.1, X-4.1, XI-7.1
See also *Gramm-Leach-Bliley Act*

Good Faith Estimate
I-2.1, II-5.5, V-3.7, V-3.8, V-3.11, V-3.16
See also *GFE*

Gramm-Leach-Bliley Act
I-2.1, II-11.1, VIII-i, VIII–1.1, VIII–1.5, VIII-6.1, VIII-6.7, VIII-6.8, VIII-6.10, IX–1.1, IX–1.10, IX-2.1, X-4.1, XI-7.1
See also *GLBA*

H

HMDA
I-2.1, II-3.1, IV–1.6, IV–1.7, IV–1.8, IV–1.11, IV–1.18, IV–1.20, IV-2.5, IV-2.21, IV-2.23, IV-2.29, V-9.1, V-9.2, V-9.3, V-9.4, V-9.5, V-9.6, V-9.7, V-9.8, V-9.9, V-9.10, V-9.11, V-9.12, V-9.13, V-9.14, V-9.15, XI–1.2, XI–1.3, XI–1.6, XI-2.2, XI-2.5, XI-2.7, XI-3.1, XI-3.3, XI-3.4, XI-3.9, XI-4.1, XI-4.2, XI-4.4, XI-5.4
See also *Home Mortgage Disclosure Act*

HOCA
I-2.1
See also *Homeowners Counseling Act*

HOEPA
I-2.1, V-9.3, V-9.13
See also *Home Ownership and Equity Protection Act*

Holder-in-Due-Course Rule
VII-3.1

Home Equity
V-1.1, V-1.22, V-6.3

Home Mortgage Disclosure Act
I-2.1, II-3.1, V-iii, V-8.1, V-9.1, V-9.5, V-9.8
See also *HMDA*

Homeowners Counseling Act
I-2.1
See also *HOCA*

Home Ownership and Equity Protection Act
V-1.1, V-9.1, V-9.3, V-9.6, V-9.7, VII–1.6, XI–1.5, XI-3.8, XI-4.3, XI-5.3
See also *HOEPA*

Homeowners Protection Act
V-5.1, V-5.6, V-5.7, V-5.8
See also *HOPA*

HOPA
V-5.6, V-5.9, V-5.10
See also *Homeowners Protection Act*

HUD
I-2.2, II-5.5, IV–1.1, V-3.1, V-3.2, V-3.3, V-3.4, V-3.5, V-3.7, V-3.8, V-3.9, V-3.10, V-3.11, V-3.12, V-3.15, V-3.16, V-4.1, V-4.2, V-6.5, V-6.14, V-8.1, V-8.2, V-9.8, XI-7.7, XI-8.4
See also *Department of Housing and Urban Development*

I

Information Sharing
II-4.6, VIII–1.4, VIII–1.5, VIII–1.6, VIII–1.9, VIII–1.11, VIII–1.12, VIII–1.13, VIII-6.1, VIII-6.3, VIII-6.7, VIII-6.8, VIII-6.25, IX–1.4, IX–1.11, XI-8.1

Insurance
I-1.1, I-2.1, I-2.2, II–1.1, II-4.1, II-4.3, II-4.4, II-4.6, II-8.1, II-8.2, II-10.1, V-ii, V-1.5, V-1.28, V-1.33, V-3.9, V-3.15, V-3.16, V-5.2, V-5.4, V-5.10, V-6.1, V-6.2, V-6.3, V-6.8, V-6.10, V-6.16, V-8.1, V-9.1, V-9.4, VI-1.2, VI-4.5, VII–1.1, VII–1.8, VIII–1.1, VIII–1.5, VIII-4.1, VIII-6.10, IX-i, IX–1.1, IX–1.4, IX–1.6, IX–1.11, IX–1.12, IX-2.1, IX-2.2, IX-2.3, IX-2.4, IX-2.5, IX-2.6, IX-2.7, IX-2.8, IX-2.9, IX-2.10, IX-2.11, IX-2.12, X-i, X–1.1, X-2.1, X-4.1, XI–1.1, XI–1.2, XI-2.1, XI-3.1, XI-5.1, XI-7.1

Interest on Deposits
II-4.4, VI-1.20, VI-4.1, VI-4.5

Internal Control
II–1.1, V-6.8, V-9.15, VI–2.16, VIII-4.5, VIII-5.5

Interstate Banking
II-4.4, X-4.1, X-4.4, XI-7.6

Interstate Branch
X-4.1, X-4.2, X-4.3, X-4.4

Interview
I-1.1, II-3.1, II-3.2, III-2.1, IV–1.15, IV–1.20, IV-2.29, V-3.6, V-3.7, VI-4.2, XI-8.1, XI-8.6, XI-8.11

Investigation
II-7.1, V-7.9, VI-1.14, VI-1.22, VI–2.6, VI–2.7, VI–2.15, VIII–1.26, VIII-6.6, VIII-6.8, VIII-6.11, VIII-6.13, VIII-6.15, VIII-6.17, VIII-6.18, VIII-6.19, VIII-6.20, VIII-6.21, VIII-6.23, VIII-6.24, XI-5.1, XI-8.3, XI-9.1

Investment Test
XI-3.5, XI-6.9

K

Kickbacks
V-3.1, V-3.4, V-3.7, V-3.9, V-3.15

L

Leasing
II-4.4, V-1.1, V-10.1, V-10.2, V-10.4, V-10.5, VI–2.18, VI-3.4, X-3.1

Lending Test
IV–1.18, XI–1.1, XI-2.1, XI-2.2, XI-2.3, XI-2.4, XI-3.2, XI-3.4, XI-3.5, XI-3.7, XI-6.4, XI-6.5, XI-6.6, XI-6.7

Limited Purpose
X-4.2, XI–1.1, XI-4.1, XI-4.2, XI-4.5, XI-7.6, XI-7.7, XII-6.1

M

Marginal Transactions
IV–1.11, IV–1.12, IV-2.19

Medical Information
VIII-6.1, VIII-6.8, VIII-6.9, VIII-6.10, VIII-6.11

Meeting
II–1.1, II–1.3, II-2.3, II-4.3, II-4.5, II-5.1, II-5.2, II-5.4, II-7.1, IV–1.8, IV-2.12, IV-2.19, V-10.1, VI–2.12, VII-4.2, VIII–1.5, XI–1.3, XI–1.7, XI-2.3, XI-2.4, XI-2.5, XI-4.3, XI-5.1, XI-5.2, XI-6.8, XI-7.8, XI-8.9, XI-8.10, XI-8.11

N

National Flood Insurance Program
I-2.2, V-6.1, V-6.8, V-6.16
See also *NFIP*

NDP
VI-4.1, IX–1.10, IX-2.4, IX-2.5
See also *Non Deposit Products*

NFIP
I-2.2, V-6.1, V-6.2, V-6.3, V-6.6, V-6.7, V-6.8, V-6.9, V-6.10
See also *National Flood Insurance Program*

Non Deposit Products
II-4.6
See also *NDP*

O

Open-End Credit
II-4.8, V-1.1, V-1.3, V-1.8, V-1.9, V-1.10, V-1.20, V-1.22, V-1.23, V-1.25, V-1.27, V-1.28, V-1.31, V-1.32, VIII-6.23

Opt Out
VIII–1.1, VIII–1.2, VIII–1.3, VIII–1.4, VIII–1.5, VIII–1.6, VIII–1.9, VIII–1.10, VIII–1.13, VIII–1.16, VIII–1.18, VIII–1.19, VIII–1.20, VIII–1.21, VIII–1.22, VIII–1.24, VIII–1.25, VIII–1.26, VIII-4.4, VIII-6.5, VIII-6.7, VIII-6.8, VIII-6.11, VIII-6.14, VIII-6.15, VIII-6.25

Overdraft
V-1.28, VI-1.6, VI-1.7, VI-1.8, VI-1.9, VI-1.10, VI-1.11, VI-1.15, VI-1.17, VI-1.18, VI-1.19, VI-1.23, VI–2.3, VI–2.6, VI–2.14, VII–1.4, VII–1.6

P

Part 329
II-4.6, VI-4.1, VI-4.2, VI-4.3, VI-4.4, VI-4.5

Part 343
VII–1.8, IX–1.4, IX-2.1, IX-2.2, IX-2.3

Part 344
IX–1.2, IX–1.10, IX–1.11, IX–1.12, IX–1.13, IX–1.14, IX–1.15, IX–1.16

Pattern or Practice
II-5.5, II-6.2, II-9.2, IV–1.13, IV–1.14, V-1.30, V-1.31, V-2.1, V-2.2, V-2.3, V-3.7, V-5.7, V-6.8

PEP
II-4.3, II-4.5, II-4.6, II-9.1
See also *Pre-Examination Planning*

Periodic Statement
V-1.9, V-1.25, V-1.26, V-1.27, V-1.28, VI-1.14, VI-1.16, VI–2.1, VI–2.3, VI–2.4, VI–2.5, VI–2.6, VI–2.8, VI–2.12, VI–2.13, VI–2.14, VI–2.16, VI-3.1, VI-3.2, VI-3.3, VI-3.7, VII–1.5

PMI
I-2.2, V-1.5, V-2.3, V-5.1, V-5.2, V-5.3, V-5.4, V-5.5, V-5.6, V-5.7, V-5.8, V-5.9, V-5.10, VIII-6.8
See also *Private Mortgage Insurance*

Points
IV–1.3, IV–1.7, IV–1.10, IV–1.13, IV–1.14, IV-2.5, V-1.5, V-1.10, V-1.11, V-1.20, V-1.21, V-1.32, V-1.33, V-1.34, V-9.3, V-9.13, VI-4.5, VII–1.6, XI-3.7, XI-3.8, XI-9.1

Pre-Examination Planning
I-2.2, II–1.2, II-3.1, II-4.3, IX–1.4, IX-2.1
See also *PEP*

Premiums
V-1.7, V-1.13, V-1.21, V-1.25, V-1.30, V-1.33, V-2.3, V-3.6, V-3.15, V-3.16, V-5.1, V-5.2, V-5.4, V-5.5, V-5.7, V-5.9, V-6.4, V-6.5, V-6.8, V-6.9, V-6.10, V-6.11, V-6.14, VI-4.1, VI-4.4, VI-4.5

Preservation of Consumers' Claims and Defenses
I-2.2, II-4.4, VII-3.1

Pricing
IV–1.3, IV–1.4, IV–1.6, IV–1.7, IV–1.8, IV–1.9, IV–1.13, IV–1.14, IV–1.15, IV–1.16, IV–1.18, IV–1.20, IV–1.22, IV-2.1, IV-2.5, IV-2.11, IV-2.15, IV-2.17, IV-2.21, IV-2.29, V-9.1, V-9.3, VII–1.5, VIII-6.18, VIII-6.25

Privacy
I-1.1, I-2.1, I-2.2, II-4.4, II-4.6, VIII–1.1, VIII–1.3, VIII–1.4, VIII–1.6, VIII–1.9, VIII–1.10, VIII–1.11, VIII–1.12, VIII–1.15, VIII–1.16, VIII–1.17, VIII–1.18, VIII–1.25, VIII–1.26, VIII-2.1, VIII-3.1, VIII-3.2, VIII-6.7, VIII-6.8, VIII-6.10

Privacy Notice
VIII–1.4, VIII–1.6, VIII–1.9, VIII–1.11, VIII–1.13, VIII–1.15, VIII–1.17, VIII–1.18, VIII–1.20, VIII–1.21, VIII-6.8

Privacy of Consumer Financial Information
II-4.4, VIII-6.7, VIII-6.8

Private Mortgage Insurance
I-2.1, I-2.2, IV-2.22, V-1.5, V-1.33, V-2.3, V-5.1, V-5.6, VIII-6.8
See also *PMI*

Public File
XI–1.2, XI–1.4, XI–1.6, XI-2.3, XI-2.7, XI-3.2, XI-3.5, XI-3.6, XI-3.8, XI-4.2, XI-4.4, XI-5.2, XI-5.3, XI-7.2, XI-7.3

Public Notice
XI–1.6, XI-2.7, XI-3.8, XI-3.9, XI-4.4, XI-5.3, XI-5.4

R

Ratings
II-4.2, II-5.1, II-7.1, II-11.1, II-12.1, II-12.2, X-4.3, X-4.5, XI–1.4, XI–1.5, XI–1.7, XI-2.4, XI-2.5, XI-2.6, XI-3.6, XI-3.7, XI-4.3, XI-4.5, XI-5.2, XI-5.3, XI-6.1, XI-6.2, XI-6.3, XI-6.4, XI-6.5, XI-7.7

Ratings Matrix
XI–1.5, XI–1.7, XI-2.4, XI-2.6, XI-4.3, XI-4.5

Real Estate Settlement Procedures
II-4.4, V-3.1, V-3.11, V-3.16, V-6.3, XI–1.5, XI-3.8, XI-4.3, XI-5.3
See also *RESPA*

Recordkeeping
IV–1.6, V-6.7, V-8.1, IX–1.2, IX–1.8, IX–1.11, IX–1.12, IX–1.14, IX–1.15, IX–1.16, IX–1.20

Record Retention
V-iii, V-1.27, V-7.7, V-7.8, V-7.9, V-8.1, V-10.2, VI-ii, VI-1.20, VI-3.3, VI-3.9, X-3.1

Redlining
IV–1.2, IV–1.8, IV–1.9, IV–1.16, IV–1.17, IV–1.18, IV–1.19, IV–1.20, IV–1.21, IV–1.22, XI-8.10

Refinancing
V-1.13, V-1.19, V-1.25, V-1.30, V-3.2, V-3.6, V-5.1, V-6.3, V-9.1, V-9.2, V-9.11, V-9.14, XI-3.3

Regulation AA
VII-i, VII-2.1

Regulation B
II-6.2, IV–1.1, IV–1.2, IV–1.3, IV–1.7, IV–1.9, IV–1.12, IV–1.20, IV-2.1, IV-2.11, IV-2.12, IV-2.15, IV-2.27, IV-2.29, V-7.1, V-7.7, V-7.8, V-7.10, V-7.11, V-9.3, X-3.1

Regulation C
IV-2.17, IV-2.29, V-8.1, V-9.1, V-9.2, V-9.3, V-9.4, V-9.5, V-9.6, V-9.7, V-9.8, V-9.11, V-9.12, V-9.15, XI-7.6

Regulation CC
II-4.6, II-6.2, VI-1.1, VI-1.2, VI-1.12, VI-1.13, VI-1.15, VI-1.16, VI-1.17, VI-1.18, VI-1.20, VI-1.21, VI-1.23, VI-3.3

Regulation DD
II-4.6, VI-3.1, VI-3.2, VI-3.3, VI-3.4, VII–1.8, X-3.1

Regulation E
II-4.6, VI–2.1, VI–2.3, VI–2.6, VI–2.7, VI–2.8, VI–2.11, VI–2.16, VI–2.17, VI–2.18, X-3.1

Regulation M
V-1.1, V-10.1, V-10.2, V-10.4, X-3.1

Regulation T
VI–2.7

Regulation X
V-3.1, V-3.2, V-3.4, V-3.7, V-3.8, V-3.11, V-3.16, V-6.11

Regulation Z
II-4.2, II-6.2, II-9.2, V-1.1, V-1.2, V-1.3, V-1.5, V-1.7, V-1.8, V-1.9, V-1.10, V-1.11, V-1.12, V-1.13, V-1.20, V-1.21, V-1.23, V-1.26, V-1.29, V-1.31, V-1.32, V-1.35, V-2.2, V-3.2, V-3.3, V-3.6, V-5.5, V-6.6, V-9.3, V-9.13, V-10.1, VI–2.1, VI–2.5, VI–2.7, VI–2.14, VII–1.8, VII-3.1, X-3.1

Reimbursable
II-5.3, II-5.5, II-9.1, II-12.2, V-2.1
See also *Reimbursements*

Reimbursements
II-4.2, II-5.3, II-5.4, II-9.1
See also *Reimbursable*

Repurchase Agreement
IX–1.3, IX–1.6, IX–1.15, IX–1.17, IX–1.19

Rescission
V-1.2, V-1.3, V-1.20, V-1.23, V-1.26, V-1.28, V-1.29, IX–1.11, XI–1.5, XI-3.8, XI-4.3, XI-5.3, XI-7.6

RESPA
I-1.2, I-2.2, V-i, V-1.27, V-3.1, V-3.2, V-3.3, V-3.4, V-3.7, V-3.8, V-3.9, V-3.12, V-3.13, V-3.15, V-3.16, V-5.9, V-6.3, V-6.4, V-6.5, V-6.9, V-6.11, V-6.14
See also *Real Estate Settlement Procedures*

Restitution
II-3.1, II-8.2, II-9.1, II-9.2, V-1.23, V-1.35, V-2.1, V-2.2, V-2.3, V-5.7

Retail Insurance
IX–1.1, IX–1.4, IX-2.1, IX-2.2, IX-2.3, IX-2.4

Retail Investment
IX–1.1, IX–1.2, IX–1.10, IX–1.13, IX-2.

Reverse Mortgage
V-1.1, V-1.2, V-1.21, V-1.26, V-1.29, V-1.32, V-3.1, V-3.2

RFPA
I-2.2, VIII-3.1
See also *Right to Financial Privacy Act*

Right to Financial Privacy Act
VIII-i, VIII–1.25, VIII-3.1
See also *RFPA*

Risk Profile
I-2.2, II–1.1, II-3.1, II-4.1, II-4.2, II-4.3, II-4.4, II-4.5, II-4.6, II-4.7, II-4.8, II-4.9, II-5.6, II-6.1, II-6.3, II-7.1, III–1.1, IV-2.17, VII–1.4, IX–1.2, IX–1.4, IX–1.7, IX-2.2

S

Safekeeping
IX–1.1, IX–1.3, IX–1.6, IX–1.7, IX–1.8, IX–1.9, IX–1.13, IX–1.19, IX–1.20

Sample Size
IV–1.10, IV–1.11, IV–1.13, IV–1.15, IV-2.6, IV-2.1, IV-2.17, IV-2.29, XI-9.1, XI-9.3, XI-9.5

Sampling
II–1.3, II-4.8, II-5.5, IV–1.11, IV–1.15, IV–1.16, IV-2.17, IV-2.28, V-2.2, V-9.9, VI-1.16, VI-1.22, VI-1.24, IX–1.2, XI-7.6, XI–1.3, XI-2.3, XI-9.1, XI-9.2, XI-9.3, XI-9.4, XI-9.5

Scope
I-2.2, II–1.2, II–1.3, II-2.4, II-3.1, II-4.1, II-4.2, II-4.3, II-4.8, II-5.2, II-5.3, II-5.6, II-6.1, II-6.3, II-7.1, II-9.1, II-12.2, III–1.1, IV–1.3, IV–1.4, IV–1.5, IV–1.6, IV–1.10, IV-2.1, IV-2.2, IV-2.3, IV-2.5, IV-2.6, IV-2.7, IV-2.9, IV-2.21, IV-2.27, V-5.1, V-6.4, VII–1.4, VIII-4.3, VIII-5.3, VIII-6.3, IX–1.1, IX–1.4, XI–1.1, XI–1.2, XI–1.4, XI-2.1, XI-2.5, XI-3.1, XI-3.6, XI-3.7, XI-4.1, XI-5.1, XI-9.2, XI-9.3, XI-9.4

SEC
I-2.2, V-1.2, VI–2.1, IX–1.1, IX–1.2, IX–1.4, IX–1.7, IX–1.10, IX–1.13
See also *Securities Exchange Commission*

Securities Exchange Commission
I-2.2
See also *SEC*

Service Test
XI-3.5, XI-6.8

Significant Violation
II-5.2, II-5.5, II-5.6

SOURCE
II-3.1, II-4.1, II-5.5, II-5.6, II-6.1, II-6.2, II-6.3, II-7.2, IX–1.10, IX-2.4, IX-2.5
See also *System of Uniform Reporting of Compliance and CRA Examinations*

Special Purpose Credit Program
I-2.2, IV-2.15, IV-2.16

Steering
IV–1.7, IV–1.8, IV–1.9, IV–1.14, IV–1.15, IV–1.22

Strategic Plan
II-4.2, XI-3.1, XI-5.1, XI-5.2, XI-5.3, XI-6.5, XI-7.2, XI-7.6, XII-5.1

Substitute Check
VI-1.1, VI-1.2, VI-1.13, VI-1.14, VI-1.15, VI-1.16, VI-1.20, VI-1.21, VI-1.22, VI-1.23

Sunshine Act
I-1.1

System of Uniform Reporting of Compliance and CRA Examinations
I-2.2, II-3.1
See also *SOURCE*

T

TCPA
I-2.2, VIII-5.1, VIII-5.2, VIII-5.3
See also *Telephone Consumer Protection Act*

Telemarketer
VIII–1.14, VIII-5.1, VIII-5.2

Telephone Consumer Protection Act
I-2.2, VIII-ii, VIII-4.1, VIII-5.1, VIII-5.4, VIII-5.5, VIII-5.6, VIII-5.7
See also *TCPA*

Testing
II–1.1, II–1.2, II–1.3, II-2.4, II-4.2, II-4.3, II-4.4, II-4.5, II-4.7, II-4.8, IV-2.5, V-1.24, V-1.27, V-1.28, V-1.29, V-5.8, V-7.1, V-9.7, VI-3.2, VI-3.3, VIII-4.4, VIII-5.3, VIII-5.4, VIII-6.3, IX–1.2, IX–1.3, IX–1.4, IX–1.8, IX-2.2, IX-2.4

TILA
V-1.1, V-1.2, V-1.3, V-1.5, V-1.19, V-1.20, V-1.21, V-1.22, V-1.23, V-1.24, V-1.31, V-2.1, V-2.2, V-3.6, V-6.10, VI–2.7, VII–1.3
See also *Truth in Lending Act*

TISA
VI-3.4, VII–1.3
See also *Truth in Savings Act*

Title Insurance
V-1.33, V-3.4, V-3.9, V-3.15

Training
II–1.1, II–1.2, II–1.3, II-2.2, II-2.3, II-4.1, II-4.4, II-4.5, II-4.6, II-4.7, II-4.8, II-5.3, II-12.2, IV–1.6, IV–1.10, IV-2.1, IV-2.11, IV-2.21, V-5.6, V-5.7, V-7.1, V-9.5, V-9.6, V-9.8, V-9.9, V-9.15, VI-1.12, VI-1.16, VI-1.17, VI-1.21, VI-1.23, VI-3.2, VII–1.7, VIII–1.6, VIII–1.7, VIII-2.1, VIII-4.4, VIII-5.2, VIII-5.3, VIII-5.4, VIII-6.3, IX–1.7, IX–1.8, IX-2.3, IX-2.4, IX-2.6, IX-2.8, XI-8.5, XI-8.8, XI-8.9

Transaction Testing
V-7.1, V-9.7, VIII-4.4, VIII-5.4, IX–1.3, IX–1.4, IX–1.8, IX-2.2, IX-2.4

Truth in Lending Act
II-4.2, II-8.2, II-9.1, II-9.2, V-1.1, V-1.2, V-1.8, V-1.10, V-1.23, V-1.35, V-2.1, V-2.2, V-2.3, V-3.3, V-3.4, V-3.9, V-3.15, V-5.5, V-6.6, V-9.3, V-10.1, V-10.2, VI–2.7, VII–1.3, VII-3.1, VIII-6.1, VIII-6.21, XI–1.5, XI-3.8, XI-4.3, XI-5.3
See also *TILA*

Truth in Savings Act
VI–2.18, VI-3.1, VI-3.4, VII–1.3
See also *TISA*

U

UDAP
I-2.2, VII-i, VII–1.1, VII–1.5
See also *Unfair or Deceptive Act or Practices*

Unfair or Deceptive Act or Practices
I-2.2
See also *UDAP*

Uniform Settlement Statement
V-3.3, V-3.7, V-3.8, V-3.12

V

Variable Rate
V-1.1, V-1.12, V-1.13, V-1.19, V-1.22, V-1.24, V-1.26, V-1.28, V-1.29, V-1.30

Visitation
II-4.3, II-5.4, II-7.1, II-7.2, II-11.1

W

Wholesale
II-2.2, IV–1.6, X-4.2, XI–1.1, XI-3.1, XI-4.1, XI-4.2, XI-4.5, XI-6.4, XI-7.2, XI-7.6, XI-7.7, XII-i, XII-6.1

Workpapers
II-3.1, II-4.2, II-4.3, II-4.8, II-5.1, II-5.5, II-5.6, II-6.1, II-6.2, II-7.2, II-9.1, IV–1.13, V-7.1, VI-4.3, IX–1.4, IX–1.10, IX-2.2, IX-2.4, XI–1.3, XI–1.4, XI–1.5

II. Compliance Examinations

Contents

Overview of Compliance Examinations **II–1.1**
- Introduction II–1.1
- Examination Approach II–1.1
- Applicability and Adaptability to Large and Small Institutions II–1.2
- Role of the Compliance Examiner II–1.2
- Overview of the Examination Process II–1.2
- References II–1.3

Compliance Management System **II-2.1**
- Introduction II-2.1

Pre-Examination Planning **II-3.1**
- Introduction II-3.1
- Gather Internally Available Information II-3.1
- Contact the Institution II-3.1
- Prepare and Send the Compliance Request Letter II-3.2
- References II-3.2

Review and Analysis **II-4.1**
- Introduction II-4.1
- Off-Site Review and Analysis II-4.1
- Risk Profile and Scope Memorandum II-4.1
- On-Site Review and Analysis II-4.3
- Entrance Meeting With Senior Management II-4.3
- Ongoing Communication II-4.3
- Review of the Compliance Management System II-4.4
- Applicable Statutes and Regulations II-4.4
- Evaluating Management Oversight II-4.4
- Evaluating the Compliance Program II-4.5
- Transaction Sampling and Testing II-4.8
- Consultation Policy II-4.9
- References II-4.9

Communicating Findings **II-5.1**
- Closing Management Meeting II-5.1
- Board Meeting II-5.1
- Report of Examination II-5.2

Documenting the Examination **II-6.1**
- Introduction II-6.1
- Job Aids II-6.3

Investigations and Visitations **II-7.1**
- Investigations II-7.1
- Visitations II-7.1
- References II-7.2

Enforcement Actions **II-8.1**
Introduction II-8.1
Types of Enforcement Actions II-8.1
References II-8.1
Truth in Lending (TIL) Restitution Verification **II-9.1**
Examination Objectives II-9.1
Verification Procedures II-9.1
References II-9.1
Job Aids II-9.2
Appeals **II-10.1**
Introduction II-10.1
Appeals Process II-10.1
References II-10.1
Examination and Visitation Frequency **II-11.1**
References II-11.1
Consumer Compliance Rating System **II-12.1**
Introduction II-12.1
Overview II-12.1
Consumer Compliance Ratings II-12.2

Overview of Compliance Examinations[1]

Introduction

The Federal Deposit Insurance Corporation (FDIC) promotes compliance with federal consumer protection laws, fair lending statutes and regulations, and the Community Reinvestment Act through supervisory and outreach programs. The FDIC conducts three types of supervisory activities to review an institution's compliance posture—compliance examinations, visitations, and investigations.

Compliance examinations are the primary means the FDIC uses to determine whether a financial institution is meeting its responsibility to comply with the requirements and proscriptions of federal consumer protection laws and regulations. The FDIC conducts visitations for a variety of reasons: to review the compliance posture of newly-chartered institutions or those converting to state non-member status; to review progress on corrective actions or compliance with enforcement action in the interval between examinations; or to investigate problems brought to the attention of the FDIC. Visitations are usually targeted events aimed at specific operational areas, or entire compliance management systems previously identified as significantly deficient. Compliance examinations and visitations may also be considered during the review of an application submitted to the FDIC (e.g., application for deposit insurance or establishing a branch). Finally, investigations are conducted primarily to follow-up on particular consumer inquiries or complaints, including fair lending complaints.

This section provides a general overview of the FDIC compliance examination. The purposes of compliance examinations are to:

- assess the quality of an FDIC-supervised institution's compliance management system (*see* "Compliance Management System") for implementing federal consumer protection statutes and regulations;
- review compliance with relevant laws and regulations; and
- initiate effective supervisory action when elements of an institution's compliance management system are deficient or when significant violations of law are found.

Examination Approach

FDIC compliance examinations blend risk-focused and process-oriented approaches. Risk-focusing involves using information gathered about a financial institution to direct FDIC examiner resources to those operational areas that present the greatest compliance risks. Concentrating on the institution's internal control infrastructure and methods, or the "process" used to ensure compliance with federal consumer protection laws and regulations, both acknowledges that the ultimate responsibility for compliance rests with the institution and encourages examination efficiency.

Determining Risk

Risk-focusing involves:

- developing a compliance risk profile for an institution using various sources of information about its business lines, organizational structure, operations, and past supervisory performance;
- assessing the quality of an institution's compliance management system in light of the risks associated with the level and complexity of its business operations and product and service offerings; and
- testing selected transactions based on risk such as when an operational area is determined to be high-risk and the institution's compliance management efforts appear weak.

Evaluating the Compliance Management System

Compliance examinations start with a top-down, process-oriented, comprehensive review and analysis of an institution's compliance management system. The compliance examiner considers:

- the knowledge level and attitude of management and personnel;
- management's responsiveness to emerging issues and past or self-identified compliance deficiencies;
- compliance organizational structure such as reporting relationships and recent experiences with staff turnover;
- management information systems;
- policies and procedures;
- training; and
- monitoring and audit programs.

Based on the results of this review, the examiner may conclude that weaknesses in the institution's compliance management system may result in current or future noncompliance with federal consumer protection laws, regulations, or policy statements. The examiner must determine, based on this analysis, whether transaction testing is warranted to further study particular risk in an entire operational area or regulation, or only a limited aspect of an area or regulation. Generally, the more confidence an examiner has in an institution's compliance management system, the less transaction testing an examiner may do.

The FDIC examination approach appropriately recognizes that the Board of Directors and management of a financial institution are responsible for complying with all federal consumer protection laws and regulations. While the formality and complexity of compliance management systems will vary

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-035: Revised Compliance Examination Procedures.

greatly among institutions, the FDIC expects the Board of Directors and management of each institution to have a system in place to effectively manage its compliance risk, consistent with its size and product mix.

Managing the examination based on risk maximizes examiner efficiency and may reduce the on-site examination presence, while emphasizing areas requiring elevated supervisory attention. By focusing on compliance management systems, examiners will be able to identify the root causes of deficiencies and suggest appropriate corrective actions designed to address the problem.

Applicability and Adaptability to Large and Small Institutions

In order to provide as much relevant and useful guidance as possible, the procedures detailed in this Handbook include instructions for reviewing various likely elements of a compliance management system (CMS), such as written policies and procedures, monitoring, training, and audit. When these elements are in place at an institution being examined, the examiner will use the guidance to evaluate their effectiveness. However, the fact that certain elements of a CMS are described in these examination procedures is not intended to suggest that all institutions *must* maintain a CMS that includes such elements. Many institutions do not. There is no reason for them to, if their operations do not warrant it. Conclusions about the adequacy of a bank's CMS must be based on the effectiveness of those elements that are in place, taken as a whole, for that bank's particular operations.

For example, assume two institutions – a large, complex bank and a small, non-complex bank – each has a record of strong compliance with all regulations that apply to the products and services it offers. Because of the complex nature of its operations, the large bank's CMS includes comprehensive external audits and formalized training from third-party vendors. The smaller bank's CMS includes no internal or external audits and no formalized training except for the compliance officer, who trains bank staff individually when needed. After reviewing all relevant material available, the examiner finds no significant deficiencies in the small bank's CMS and no reason to believe that the adoption of an audit function or formalized training is necessary to ensure ongoing compliance. The examiner would not criticize the small bank for the absence of audit or training. Nor should the examiner feel obliged to assign a higher rating to the larger bank simply because its CMS has more elements than the smaller bank. This is because each bank has a CMS that is adequate for the compliance responsibilities that are incumbent upon it due to its operating environment.

The descriptions of CMS elements provided in the Handbook will assist the examiner in evaluating the element if one exists and in suggesting content if he or she determines that management should consider adopting an element.

Role of the Compliance Examiner

Compliance examiners play a crucial role in the supervisory process. The compliance examination, and follow-up supervisory attention to an institution's compliance program deficiencies and violations, helps to ensure that consumers and businesses obtain the benefits and protections afforded them under federal law. To this end, an examiner's efforts should help the financial institution improve its compliance posture and prevent future violations.

Primarily, examiners must:

- establish an examination scope focused on assessed risk areas;
- evaluate an institution's compliance management system;
- conduct transaction testing where risks intersect with weaknesses in the compliance management system or uncertainties about aspects of that system; and
- report findings to the Board of Directors and management of the institution.

As part of the examination process, examiners are expected to:

- take a reasoned, common sense approach to examining and use sound judgment when making decisions;
- maintain ongoing communication with financial institution management throughout an examination;
- assist an institution to help itself improve performance by providing management with sound recommendations for enhancing its compliance management system;
- share experiences and knowledge of successful compliance management systems; and
- provide guidance regarding the various consumer and fair lending laws and regulations.

Overview of the Examination Process

Compliance examinations primarily involve three stages: pre-examination planning; review and analysis, both off-site and on-site; and communicating findings to institution management via meetings and a report of examination.

Pre-examination Planning

Pre-examination planning involves gathering information available in FDIC records and databases, contacting the financial institution to review and narrow the draft request for information and documents, and delivering a letter to the institution requesting specific information and documents for detailed analysis by the examination team (*see* Section III). Proper examination preparation and planning maximizes an examination team's time and resources.

Review and Analysis

During the review and analysis phase of an examination, an examiner thoroughly evaluates an institution's compliance management system to assess its quality and effectiveness, and documents system weaknesses and violations of federal consumer protection laws and regulations, if any. The Examiner-in-Charge starts by analyzing information about the type, level and complexity of the institution's operations, and begins to develop the scope of the examination and plan for resource deployment to areas of highest risk.

The scope of an examination will be preliminarily established prior to entering the financial institution, and should be refined through the results of examiner discussions with senior management, the compliance officer (or staff assigned), and the internal auditor. While on-site at an institution, an examiner may limit the scope of the compliance review based on reliable procedures and controls in place. Similarly, the examiner may expand the review based on, for example, management's view about compliance, a lack of necessary procedures or controls, the presence of violations, or the presence of new or significantly amended regulations. The compliance review continues with an evaluation of the:

- commitment of the Board of Directors, management, and staff to compliance;
- qualifications of the compliance officer or designated staff;
- scope and effectiveness of compliance policies and procedures;
- effectiveness of training;
- thoroughness of monitoring and any internal/external reviews or audits; and
- responsiveness of the Board and management to the findings of internal/external reviews and to the findings of the previous examination.

An examiner must consider the size, level, and complexity of an institution's operations when evaluating the adequacy of an institution's compliance management system.

The examination procedures outlined in this Handbook are designed to enable an examiner to identify and measure compliance risk; make an assessment of an institution's compliance infrastructure and methods for identifying, monitoring, and controlling compliance risk; and determine the transaction testing needed to assess the integrity of the compliance management system. The number of transactions selected and the type of sampling used should be relative to the perceived risk and the need to assess the level of compliance in an activity or function.

At the conclusion of the review and analysis phase, an examiner:

- summarizes all findings regarding the strengths and weaknesses of an institution's compliance management system;
- determines the cause(s) of programmatic deficiencies or violations and relates them to the specific weakness(es) in the institution's compliance management system; and
- identifies actions necessary to address deficiencies or violations.

Determining the cause(s) of a program deficiency or violation is critical to recommending solutions that will successfully address problem areas and strengthen an institution's compliance posture for the future.

Communicating Findings

Examiners must discuss findings and recommendations with management and obtain a commitment for corrective action. These discussions will be held during the course of the examination and at an exit meeting with senior management and/or the Board of Directors.

The results of the examination will also be communicated to the Board of Directors and management of the institution in a Report of Examination. The Report of Examination provides an account of the strengths and weaknesses of a compliance management system. It is more than an exception-based document and should add value to the institution's compliance efforts.

References

DSC RD Memo 04-031; Compliance Examination Procedures in Multi-Bank Holding Company Environments
http://fdic01/division/dsc/memos/memos/6000/04-031.pdf

(This page intentionally left blank.)

Compliance Management System

Introduction

Financial institutions operate in a dynamic environment influenced by industry consolidation, convergence of financial services, emerging technology, and market globalization. To remain profitable in such an environment, financial institutions continuously assess and modify their product and service offerings and operations in the context of a business strategy. At the same time, new legislation may be enacted to address developments in the marketplace.

All these forces combine to create inherent risk. To address this risk, a financial institution must develop and maintain a sound compliance management system that is integrated into the overall risk management strategy of the institution. Ultimately, compliance should be part of the daily routine of management and employees of a financial institution.

This chapter discusses the elements of an effective compliance management system—Board of Directors and management oversight, the compliance program, and the compliance audit.

Compliance Management System

A compliance management system is how an institution:

- learns about its compliance responsibilities;
- ensures that employees understand these responsibilities;
- ensures that requirements are incorporated into business processes;
- reviews operations to ensure responsibilities are carried out and requirements are met; and
- takes corrective action and updates materials as necessary.

An effective compliance management system is commonly comprised of three interdependent elements:

- Board and management oversight;
- Compliance program; and
- Compliance audit.

When all elements are strong and working together, an institution will be successful at managing its compliance responsibilities and risks now and in the future.

Financial institutions are required to comply with federal consumer protection laws and regulations. Noncompliance can result in monetary penalties, litigation, and formal enforcement actions. The responsibility for ensuring an institution is in compliance appropriately rests with the Board of Directors and management of the institution. Therefore, the FDIC expects every FDIC-supervised institution to have an effective compliance management system adapted to its unique business strategy.

Board of Directors and Management Oversight

The Board of Directors of a financial institution is ultimately responsible for developing and administering a compliance management system that ensures compliance with federal consumer protection laws and regulations. To a large degree, the success of an institution's compliance management system is founded on the actions taken by its Board and senior management. Key actions that a Board and management may take to demonstrate their commitment to maintaining an effective compliance management system and to set a positive climate for compliance include:

- demonstrating clear and unequivocal expectations about compliance;
- adopting clear policy statements;
- appointing a compliance officer with authority and accountability;
- allocating resources to compliance functions commensurate with the level and complexity of the institution's operations;
- conducting periodic compliance audits; and
- providing for recurrent reports by the compliance officer to the Board.

Leadership on compliance by the Board of Directors and senior management sets the tone in an organization. The Board and senior management should discuss compliance topics during their meetings. They should include compliance matters in their communications to institution personnel and the general public. Institution management and staff should have a clear understanding that compliance is important to the Board and senior management, and that they are expected to incorporate compliance in their daily operations.

Policy statements on compliance topics provide a framework for the institution's procedures and provide clear communication to management and employees of the Board's intentions toward compliance.

Regardless of size or institution complexity, the first step a Board of Directors and senior management should take in providing for the administration of the compliance program is the designation of a compliance officer. In developing the organizational structure of the compliance program, a Board and senior management must grant a compliance officer sufficient authority and independence to:

- cross departmental lines;
- have access to all areas of the institution's operations; and
- effect corrective action.

A compliance committee, as an alternative to or in addition to a full-time compliance officer, could be formed consisting

of the compliance officer, representatives from various departments, and member(s) of senior management or the Board. However, the ultimate responsibility of overall compliance with all statutes and regulations resides with the Board.

A qualified compliance officer will have knowledge and understanding of all consumer protection laws and regulations that apply to the business operations of the financial institution. The compliance officer should also have general knowledge of the overall operations of the institution and interact with all of the departments and branches to keep abreast of changes (e.g., new products, services or business practices; personnel turnover) that may require action to manage perceived risk. In larger or more complex institutions the compliance officer may devote all of his or her time to compliance activities. In smaller or less complex institutions, where staffing is limited, a full-time compliance officer may not be necessary; instead, the compliance responsibilities may be divided between various individuals by type of regulation, such as loan-related or deposit-related regulations. In some instances, several banks may share a compliance officer.

A compliance officer's general responsibilities, regardless of the size or complexity of the institution's operations, include:

- developing compliance policies and procedures;
- training management and employees in consumer protection laws and regulations;
- reviewing policies and procedures for compliance with applicable laws and regulations and the institution's stated policies and procedures;
- assessing emerging issues or potential liabilities;
- coordinating responses to consumer complaints;
- reporting compliance activities and audit/review findings to the Board; and
- ensuring corrective actions.

When more than one individual is responsible for compliance matters, responsibility and accountability must be clearly defined.

To be effective at overseeing compliance and maintaining a strong compliance posture, a compliance officer must be provided with ongoing training, as well as sufficient time and adequate resources to do the job. The compliance officer may utilize third-party service providers or consultants to help administer the compliance program or audit functions. However, the compliance officer should perform sufficient due diligence to verify that the provider is qualified, because ultimately the institution is accountable for compliance with consumer protection laws and regulations.

Compliance Program

A sound compliance program is essential to the efficient and successful operation of the institution, much as a business plan. A compliance program includes the following components:

- Policies and procedures
- Training
- Monitoring
- Consumer complaint response

A financial institution should generally establish a formal, written compliance program. In addition to being a planned and organized effort to guide the institution's compliance activities, a written program represents an essential source document that will serve as a training and reference tool for all employees. A well planned, implemented, and maintained compliance program will prevent or reduce regulatory violations, provide cost efficiencies, and is a sound business step.

It is expected that no two compliance programs will be the same, and that the formality of a program will be dictated by numerous considerations, including:

- institution's size, number of branches, and organizational structure;
- business strategy of the institution (e.g., community bank versus regional; or retail versus wholesale bank);
- types of products;
- location of the institution—its main office and branches; and
- other influences, such as whether the institution is involved in interstate or international banking.

The formality of the compliance program is not as important as its effectiveness. This is especially true for small institutions where the program may not be in writing but an effective monitoring system has been established that ensures overall compliance. However, during periods of expansion or turnover of staff, a written compliance program becomes more important because individuals with the particular knowledge or experience may no longer be with the institution or available for contact.

Regardless of the degree of formality, all financial institutions are expected to manage their compliance programs proactively to ensure continuing compliance. Compliance efforts require an ongoing commitment from all levels of management and should be a part of an institution's daily business operations.

Policies and Procedures

Compliance policies and procedures generally should be described in a document and reviewed and updated as the

financial institution's business and regulatory environment changes. Policies should be established that include goals and objectives and appropriate procedures for meeting those goals and objectives. Generally, the degree of detail or specificity of procedures will vary in accordance with the complexity of the issue or transactions addressed.

An institution's policies and procedures should provide personnel with all the information needed to perform a business transaction. This may include applicable regulation cites and definitions, sample forms with instructions, institution policy, and, where appropriate, directions for routing, reviewing, retaining, and destroying transaction documents. For example, loan application procedures should be established so that institution personnel consistently treat all applicants equitably and fairly. These procedures should incorporate and clearly convey to staff the regulatory requirements and the institution's lending policy, including the institution's nondiscriminatory lending criteria.

Compliance policies and procedures are the means to ensure consistent operating guidelines that support the institution in complying with applicable federal consumer protection laws and regulations. Also, these criteria will provide standards by which compliance officers and line managers may review business operations.

Training

Education of a financial institution's Board of Directors, management, and staff is essential to maintaining an effective compliance program. Line management and staff should receive specific, comprehensive training in laws and regulations, and internal policies and procedures that directly affect their jobs.

The compliance officer should be responsible for compliance training and establish a regular training schedule for Directors, management, and staff, as well as for third-party service providers. Training can be conducted in-house or through external training programs or seminars. Once personnel have been trained on a particular subject, a compliance officer should periodically assess employees on their knowledge and comprehension of the subject matter.

An effective compliance training program is frequently updated with current, complete, and accurate information on products and services and business operations of the institution, consumer protection laws and regulations, internal policies and procedures, and emerging issues in the public domain. For example, loan officers, as well as other front-line personnel regularly interacting with loan applicants, should be fully informed about the loan products and services offered by the institution and thoroughly knowledgeable about all aspects of the consumer credit protection laws and regulations that apply.

Monitoring

Monitoring is a proactive approach by the institution to identify procedural or training weaknesses in an effort to preclude regulatory violations. Institutions that include a compliance officer in the planning, development, and implementation of business propositions increase the likelihood of success of its compliance monitoring function.

An effective monitoring system includes regularly scheduled reviews of:

- disclosures and calculations for various product offerings;
- document filing and retention procedures;
- posted notices, marketing literature, and advertising;
- various state usury and consumer protection laws and regulations;
- third party service provider operations; and
- internal compliance communication systems that provide updates and revisions of the applicable laws and regulations to management and staff.

Changes to regulations or changes in an institution's business operations, products, or services should trigger a review of established compliance procedures. Modifications that are necessary should be made expeditiously to minimize compliance risk, and applicable personnel in all affected operating units should be advised of the changes.

Monitoring also includes reviews at the transaction level during the normal, daily activities of employees in every operating unit of the institution. This might include, for example, verification of an annual percentage rate, or a second review of a loan application, before the transaction is completed. Monitoring at this level helps establish management and staff accountability and identifies potential problems in a timely manner.

Compliance officers should monitor employee performance to ensure that they are following an institution's established internal compliance policies and procedures. The frequency and volume of employee turnover at an institution should be factored into the schedule for reviews. Such reviews are especially critical after problems have been noted during past audits or examinations, regulation changes, new products are introduced, mergers occur, or when additional branch locations are opened.

Consumer Complaint Response

An institution should be prepared to handle consumer complaints promptly. Procedures should be established for addressing complaints, and individuals or departments responsible for handling them should be designated and known to all institution personnel to expedite responses.

Complaints may be indicative of a compliance weakness in a particular function or department. Therefore, a compliance officer should be aware of the complaints received and act to ensure a timely resolution. A compliance officer should determine the cause of the complaint and take action to improve the institution's business practices, as appropriate.

Compliance Audit

A compliance audit is an independent review of an institution's compliance with consumer protection laws and regulations and adherence to internal policies and procedures. The audit helps management ensure ongoing compliance and identify compliance risk conditions. It complements the institution's internal monitoring system. The Board of Directors of the institution should determine the scope of an audit, and the frequency with which audits are conducted.

The scope and frequency of an audit should consider such factors as:

- expertise and experience of various institution personnel;
- organization and staffing of the compliance function;
- volume of transactions;
- complexity of products offered;
- number and type of consumer complaints received;
- number and type of branches;
- acquisition or opening of additional branch(es);
- size of the institution;
- organizational structure of the institution;
- outsourcing of functions to third party service providers;
- degree to which policies and procedures are defined and detailed in writing; and
- magnitude/frequency of changes to any of the above.

An audit may be conducted once a year, or may be ongoing where all products and services, all applicable operations, and all departments and branches are addressed on a staggered basis. An audit may be performed "in-house" or may be contracted to an outside firm or individual, such as a consultant or accountant. A financial institution that outsources the audit should make certain that the auditor is well-versed in compliance, and that the audit program is based on current law and regulation, as well as comprehensive in scope. Generally, a strong compliance audit will incorporate vigorous transaction testing.

Regardless of whether audits are conducted by institution personnel or by a contractor, the audit findings should be reported directly to the Board of Directors or a committee of the Board. A written compliance audit report should include:

- scope of the audit (including departments, branches, and product types reviewed);
- deficiencies or modifications identified;
- number of transactions sampled by category of product type; and
- descriptions of, or suggestions for, corrective actions and time frames for correction.

Board and senior management response to the audit report should be prompt. The compliance officer should receive a copy of all compliance audit reports, and act to address noted deficiencies and required changes to ensure full compliance with consumer protection laws and regulations. Management should also establish follow-up procedures to verify, at a later date, that the corrective actions were lasting and effective.

Pre-Examination Planning

Introduction

The overall objective of pre-examination planning is to collect as much information as possible prior to the review and analysis stage of the examination. This information allows the Examiner-in-Charge (EIC) and the examination team to efficiently plan and conduct its work both off-site and on-site during the second phase of the examination.

This chapter discusses the information gathering process and the Compliance Request Letter. The Compliance Request Letter includes the Compliance Information and Document Request (CIDR) and a request for an electronic data download. The CIDR contains a list of information and documents the financial institution can forward to examination staff in advance or made available at the commencement of the on-site examination.

Gather Internally Available Information

FDIC staff should collect information about an institution from both internal and external sources to aid in constructing the risk profile and scope of an examination (*see* "Review and Analysis" for discussion about risk profile and scope memorandum). Examiners should first concentrate on gathering as much of the information as possible from the FDIC field and regional offices, and from third party public sources. Then, information should be obtained from the financial institution. The following is a list of some key documents and information that the EIC should obtain for review because of their relevance to the financial institution's compliance posture.

From the Field Office (FO)/Regional Office (RO)

- Prior Compliance Risk Profile and Scope Memorandum and other information from the System of Uniform Reporting of Compliance and CRA Examinations (SOURCE)
- Reports of Examination and supporting workpapers for compliance, risk management, trust, and information systems
- Prior corrective actions (such as restitution) and responses to Reports of Examination
- Risk management supervisory plan (for complex institutions, or others, as available)
- CRA Performance Evaluations and community demographic data
- UBPR and Call Reports
- FDIC Monitoring reports
- Complaint and correspondence files
- Applications in process
- Previous years' Home Mortgage Disclosure Act Loan Application Registers (HMDA LARs)
- CRA small business and small farm report data
- Content of the financial institution's website

From Third Parties

- Public records, such as securities filings
- Newspaper articles that raise examination related issues
- Vendor programs
- External audits

Before contacting the institution to gather additional information, the EIC (or designee) must review the material gathered from internal sources. This will avoid duplicative requests. For example, if Board minutes were recently requested by risk management, then those minutes would not need to be obtained from the bank. Of course, it may still be necessary to verify or update the information or documents with the institution, but the burden of production will be reduced.

Contact the Institution

Approximately two months prior to the scheduled on-site date for the examination, the EIC must contact the institution and arrange either a telephone or in-person discussion of the Compliance Information and Document Request (CIDR). The purpose of the discussion is to gather current information to ensure that the CIDR is narrowly tailored to request only what is necessary to properly conduct the examination. The formal Compliance Request Letter, which includes both the CIDR and a request for electronic data download, must be sent to the bank no later than 45 days prior to the on-site date. This will ensure that the bank has sufficient time to properly gather and submit its response, and that the examination team has time to conduct its off-site review.

The preliminary discussion will reduce the amount of time needed on-site to gather certain information from the institution, and will assist in planning the on-site work. It also provides an opportunity to alert the bank to the staff members who the examiner will likely wish to interview during the on-site portion of the examination. This will allow the bank to take steps to ensure, to the extent possible, that those persons are available when needed. The EIC or designee should use the discussion to consider whether certain information should be sent to the examination team for review, or held for on-site review. They should also discuss the timing of production and the subsequent on-site examination. An interview sheet is included in this Handbook (*see* Section III) and should be used to guide the discussion and the subsequent tailoring of the CIDR. The interview sheet may be amended as appropriate for each institution.

Director Involvement

During the preliminary discussion, the EIC should encourage management to invite all Directors to participate in regularly scheduled meetings with examiners or to schedule individual meetings with the EIC if that is the preference of the Directors. The EIC should emphasize that such participation is purely voluntary and that a lack of participation will not be viewed negatively. As stated in the memorandum announcing this initiative, "The primary objectives are to improve communication with outside Directors, increase director knowledge of the examination process, provide an opportunity for Directors to discuss their views with examiners on banking related matters, and give examiners the opportunity to gain further insight into the experience levels and leadership qualities of bank management."

Prepare and Send the Compliance Request Letter

Examiners can download WORD templates for the Interview Sheet, Compliance Request Letter (entry letter), the CIDR, and electronic data download request from GENESYS. All but the latter form may also be accessed through the DSC website. These documents must be tailored as appropriate for each institution.

The CIDR template is a comprehensive list of information and documentation that may be required to conduct a compliance examination. After conducting the review and discussion outlined above, the EIC (or a designee with whom he or she communicates closely) is expected to use the template to create a CIDR that includes only items that are relevant to the examination of a particular institution. Not all items will be relevant to every examination. Time periods should be specified when seeking periodic reports, ledgers, administrative changes, etc., to avoid receiving data not relevant to the examination.

The Compliance Request Letter also includes requests for certain electronic data downloads. The EIC must coordinate these downloads with the CIDR requests to eliminate redundancies.

The Compliance Request Letter may be provided to the institution in either hard copy or electronic format, indicating where the materials should be delivered to the EIC or exam team and in what format. As indicated above, the timing of the request and the turnaround must ensure that the institution has sufficient time to assemble the requested information and the examination team has sufficient time to adequately review the materials. Where appropriate, the EIC may visit the institution prior to the formal on-site date to either pick up the documents, or review on-site any that that are too bulky to duplicate or that are confidential. FDICconnect may now be used for secure requests and transmission of electronic examination files, and its use should be encouraged where appropriate.

References

DSC RD Memo 02-051: Increased Director Involvement in the Examination Process
http://fdic01/division/dsc/memos/memos/6000/2002-051.pdf

Examination Document Templates
GENESYS: http://fdic01/division/dsc/compliance/tools/compgenesys.html

DSC RD Memo 04-048: e-Exam Pilot Program Website– Completion of Document Imaging Survey
http://fdic01/division/dsc/memos/memos/6000/04-048.pdf

DSC RD Memo 06-007: Revised Compliance Examination Documents
http://fdic01/division/dsc/memos/memos/6000/06-007.pdf

Review and Analysis

Introduction

The FDIC's compliance examination process assesses how well a financial institution manages compliance with federal consumer protection laws and regulations. The review and analysis phase of the compliance examination starts with a top-down, comprehensive evaluation of the compliance management system (CMS) used by the financial institution to identify, monitor, and manage its compliance responsibilities and risks. The procedures outlined below guide the examiner through an assessment of an institution's CMS, and assist the examiner in identifying specific areas of weakness for further analysis. Many procedures listed in this section can be performed at the field office or other location prior to the on-site portion of the examination, if materials are available.

Off-Site Review and Analysis

The Examiner-in-Charge (EIC) reviews and analyzes the material gathered from FDIC, third parties, and the institution in response to the Compliance Request Letter in order to develop the risk profile and scope memorandum and plan the on-site portion of the examination. This review and analysis should be broad enough to obtain an understanding of the organizational structure of the institution, its related activities, and compliance risks associated with each of its activities. The review should be used to preliminarily determine whether the institution's management and Board of Directors identify, understand, and adequately control the elements of risks facing the financial institution. In general, management and Directors are expected to have a clearly defined system of risk management controls governing the institution's compliance operations, including those activities conducted by affiliates and third party vendors. During this review the EIC should consider what types of questions should be asked while on-site to test whether the bank's written policies and procedures accurately reflect actual operations.

Risk Profile and Scope Memorandum

The goal of a risk-focused, process-oriented examination is to direct resources toward areas with higher degrees of risk. To accomplish this goal, the examiner must assess the financial institution's CMS as it applies to key operational areas, and evaluate the risk of non-compliance with applicable laws and regulations. The result of this assessment is the Risk Profile, a matrix and narrative that summarizes the perceived risks, and provide the basis for preparing the Scope Memorandum. The Scope Memorandum describes the focus of the examination, including issues to be investigated and regulatory areas to be targeted during the examination.

A Risk Profile and Scope Memorandum template should be downloaded from SOURCE at the beginning of the examination process. SOURCE will automatically populate it with relevant information from other FDIC databases. After conducting the off-site review and analysis, the examiner should document the preliminary risk assessment and expected examination scope in the Risk Profile and Scope Memorandum, and obtain and document appropriate approval. During the examination the EIC should obtain approval for any material changes to the scope of the examination, in accordance with regional or field office requirements.

At the conclusion of the examination the EIC must review the preliminary Risk Profile and Scope Memorandum developed at the beginning of the examination and edit it as needed to reflect the post-examination risk assessment of the institution, and the actual scope of the examination. The final Risk Profile and Scope Memorandum should be posted to SOURCE, making it available to all staff and management during the exam review and for future internal use, especially for the start of the subsequent examination.

Additional information about crafting the Risk Profile and Scope Memorandum is provided in the following sections.

Developing a Risk Profile

In order to properly assess a financial institution's risk, the EIC or designee reviews the following primary areas:

Compliance Management System:

- Management and Director Oversight
- Compliance Program
  - Policies and Procedures
  - Training
  - Monitoring Procedures
  - Complaint Response
- Audit Procedures

Operational Areas:

- Lending
- Deposits
- Insurance Sales
- Investment Sales
- Other Products or Issues

The resulting risk profile compares the strength of the CMS to the risks attendant to particular operational areas.

While reviewing a bank's operations, the examiner should consider the impact of the following types of risk:

Performance Risk:

- Current & Past Enforcement Actions
- Reimbursement History
- History of Compliance with Fair Lending laws

- Current and Prior Regulator Ratings
- Audit Findings

Regulation Risk:

- Applicable Regulations
- New Regulations
- Changes to Regulations
- Recent Case Law

Product Risk:

- Major Product Line
- New Products/Services
- Growth in Operations
- Complexity of Operations
- Third-party Affiliations

Performance Risk: The financial institution's past compliance performance is an important consideration when developing its risk profile. Historic effectiveness of the compliance management system, including the results of previous examinations and management's record of taking corrective measures, will impact its risk profile and ultimately, the scope of the examination. The most recent compliance history should be given the most weight. The EIC will be able to locate performance risk information in various areas, including the FDIC's correspondence and enforcement records for the subject institution. The most recent Risk Management report and workpapers may contain additional information on the bank's performance risk (e.g. comments regarding institution management).

Regulation Risk: Regulation risk measures the possible consequences to the bank and its customers of noncompliance with specific regulatory provisions. Regulation risk recognizes that the impact of noncompliance differs depending on the consumer law or regulation. For the public, it is the measurement of relative adverse financial impact or other harm that noncompliance may produce. For the bank, regulation risk is the measurement of legal, reputation, and financial harm that noncompliance may produce. For example, the financial harm both to the bank and to consumers associated with violations of the Truth in Lending Act (Regulation Z) requiring reimbursements far exceeds the consequences of an isolated undocumented check hold. The level of regulation risk is affected by such factors as:

- Potential financial and/or reputation harm to consumers;
- Potential legal, reputation, and financial harm to a bank;
- New laws, regulations or amendments thereof; and
- The amount of transaction activity subject to a specific regulation.

Product Risk: The institution's products and services impact the bank's risk depending upon the financial institution's size, market share and portfolio concentration. The complexity of products offered and the associated likelihood of error should be considered. Third party affiliations, particularly for product delivery, present heightened risk. Finally, the institution's strategic plan for growth and for the introduction of new products and services should also be taken into account.

Taking into consideration the conclusions drawn in each of the preceding components, and any other pertinent information, the examiner should develop a risk profile of the institution by assigning and adequately supporting a category of Low, Moderate, or High compliance risk for each CMS element and operational area. An institution with a Low Risk Profile in a particular area will effectively manage compliance risks. The institution's Board and management actively participate in managing the CMS, the CMS is considered strong, and historic examinations support this assessment. Spot checks of transactions may be appropriate to verify continued strength. An institution with a Moderate Risk Profile is generally effective, but specific weaknesses are identified or suspected. Some particularized transaction testing should be planned. An institution with a High Risk Profile is ineffective in identifying, monitoring, or managing compliance risks in particular operational areas. Significant risk is readily apparent and may be supported by prior examination findings. Institutions in this category will require more extensive transaction testing in light of the risks of non-compliance. (Specific issues to be investigated and areas to be targeted with transaction testing should be addressed in the Scope Memorandum, which is discussed in the next Section.)

It is important to remember that one element of a financial institution's compliance efforts may influence another area. Be aware of relationships and their mutual impact. For example, if the initial review of bank practices identifies a lack of audit of loan denials, the examiner should look to see whether monitoring procedures are in place to mitigate the impact of the lack of audit procedures. The existence of monitoring procedures may lead the examiner to determine that the absence of an audit does not raise the institution's risk profile. Conversely, if the initial review of bank policies and procedures identifies well-organized written guidelines for deposit compliance management, the examiner should also consider the bank's record of oversight in this area. If deposit compliance has historically suffered from poor management oversight, then the existence of written procedures should be given less weight when determining the risk profile.

The following matrix should be completed as an illustration of the bank's overall Risk Profile. Each column/row intersection should be labeled as presenting a (L)ow, (M)oderate, or (H)igh level of compliance risk for the institution. The narrative accompanying the matrix should summarize the perceived risks with sufficient information to support the risk ratings, including particular performance, regulation or product risks.

Risk Profile Matrix and Summary

Institution Name City, State	CMS Elements Oversight | Program | Audit		
Operational Areas:			
Lending			
Deposits			
Insurance Sales			
Investment Sales (Other)			
Other Issues:			
( )			
( )			

(L) = Low Risk; (M) = Moderate Risk; (H) = High Risk

Developing a Scope Memorandum

The EIC should prepare a Scope Memorandum using the information reflected in the preliminary Risk Profile. The Scope Memorandum must be in writing and should address the following:

- Scope of the examination;
- Issues to be investigated or areas to be targeted, and reasons why; and
- Areas not included in the examination scope, and reasons why.

The severity of CMS weakness and operational risk will dictate the intensity of transaction testing. However, if no transaction testing in a particular regulatory area was done in the previous examination, then at least a spot-check should be done during the current examination, even if there are no risk indicators.

In the final Risk Profile and Scope Memorandum, the narrative in the Scope Memorandum describing changes should be in a different typeface for ease of reference. Do not delete the initial narrative. If a spot-check of a particular regulation revealed no problems, that should be noted in the Scope Memorandum chart; no Examiner Summary is required. If an Examiner Summary was prepared, it should be referenced in the Scope Memorandum chart.

The Scope Memorandum provides all members of the examination team with a central point of reference throughout the examination. A sample Risk Profile and Scope Memorandum can be found in Section III. Note that the format of the memorandum may be tailored to individual circumstances if appropriate.

On-Site Review and Analysis

Throughout the on-site review and analysis phase of the examination, the examiner should have discussions with senior management, the compliance officer, Directors, and other personnel to develop an understanding of how management approaches its compliance responsibilities. These discussions will enable the examiner to determine whether and to what extent the financial institution has a compliance management system that is integrated into its daily operations.

Entrance Meeting With Senior Management

During the pre-examination planning stage, the EIC should schedule a meeting with senior management (e.g., the president, chief executive officer, compliance officer, and if they wish, members of the Board of Directors). This meeting should take place as soon as possible after entering the financial institution to conduct the on-site portion of the examination and should facilitate the discussion of various administrative items and the scope of the examination. Matters to be discussed during the entrance meeting include:

- An overview of the examination process.
- The names of FDIC examiners involved.
- Anticipated length of the examination.
- The EIC's accessibility throughout the on-site examination to discuss any issues relating to the examination or FDIC policy and practices.
- The identity of the individual(s) who is/are the primary contact person(s) for examination related issues.
- Any issues identified during off-site review and analysis, particularly areas of significant risk that will be receiving close attention.
- The materials requested during PEP that were not provided by the financial institution prior to the on-site date.
- An explanation of the closing management meeting procedures.
- The date of the next Board of Directors/trustees meeting. (Management should be advised that depending upon the examination findings, the FDIC may need to attend the regularly scheduled meeting or call for a special Board meeting.)
- Any issues related to the CRA evaluation and fair lending review.

Examiners should use a written agenda to document the issues covered at the entrance meeting, and file a copy in the examination workpapers.

Ongoing Communication

Communication between financial institution management, Boards of Directors, bank staff, and FDIC examination staff is a major component of an effective examination or visitation. Open communication should be maintained with management during the course of the examination. To the extent possible, all issues of concern should be discussed with management as they arise. This allows management time to provide additional

relevant information, or to begin correcting problems where appropriate.

The financial institution's directors/trustees are encouraged to participate in regularly scheduled meetings with examiners. However, examination findings should be discussed with senior management prior to discussing with Board members. Also, the EIC should notify the financial institution's management as early as possible of any plans to meet with the Board to present examination findings. This will provide directors/trustees with an opportunity to forego meetings during the examination, if that is their preference.

Review of the Compliance Management System

Based on information gleaned from the discussions with bank management and staff, along with the off-site review and analysis, the examiner should:

- Determine the quality of the institution's compliance management system, including the degree to which management has taken a proactive approach to compliance and whether management can demonstrate its ability to assure compliance with federal consumer laws and regulations.
- Assess whether the compliance management system is effective at facilitating compliance.
- Identify potential deficiencies in the compliance management system and areas of greatest risk and concern.
- Determine where transaction testing is necessary.

The following sections include question lists that are intended to serve only as general guidance for the matters to be addressed during the examiner's dialogue with bank personnel. The sections are organized by elements of the CMS, and should be considered in conjunction with each of the different operational areas of the bank to come to a conclusion about the strength of each element overall. The questions will not apply to every examination scenario and should be customized to each situation. Examiner judgment must be used to determine whether additional pertinent questions should be asked. Because all the facets of a compliance management system are interrelated, certain themes will be repeated in the question lists for multiple sections. Throughout the examination process, the examiner should refer to the FDIC Law, Regulations and Related Acts service set, and any pertinent outstanding FDIC guidance regarding the regulatory or policy requirements of each area under review.

NOTE: The question lists are not to be given to institution management to complete.

Applicable Statutes and Regulations

The compliance management system must adequately address (through oversight, policies and procedures, training, monitoring, complaint response, and audit) all areas related to the following federal consumer laws, regulations, rules, and policy statements:

Lending

Truth in Lending
Real Estate Settlement Procedures
Homeowners Protection
Credit Practices Rule
Equal Credit Opportunity
Fair Housing
Home Mortgage Disclosure
Fair Credit Reporting
Flood Insurance
Preservation of Consumers' Claims and Defenses
Homeownership Counseling

Deposits

Truth in Savings
Electronic Fund Transfers
Expedited Funds Availability
Interest on Deposits

Other

CRA Technical Requirements
Advertisement of Membership
Electronic Banking
Privacy of Consumer Financial Information
Right to Financial Privacy
Non-Deposit Products
Consumer Leasing
Fair Debt Collection Practices
Branch Closings
Interstate Banking
Children's Online Privacy Protection
Unfair or Deceptive Acts or Practices
Telephone Consumer Protection
Controlling the Assault of Non-Solicited
Pornography and Marketing

Evaluating Management Oversight

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to management oversight;*
- *Prior Reports of Examination, including Compliance, Safety and Soundness, and specialty examinations (with a focus on the management component of each);*
- *Minutes of the meetings of the Board of Directors (BOD), compliance committee, discount committee, etc.;*
- *New, modified or amended compliance-related policies, procedures, and other internal memorandum;*

- *All files related to the receipt and resolution of compliance-related consumer complaints archived by the institution or the FDIC, including information from the FDIC's automated complaint tracking system (Specialized Tracking and Reporting System [STARS]);*
- *Written management and Board response and follow-up to internal and external audits;*
- *Agreements with outside vendors for compliance services and educational material;*
- *Institution organizational chart and management résumés; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

Procedures

1. Review Board and committee minutes. Review of these documents should give the examiner an indication of the following:
   - Extent of Board oversight/involvement in assuring compliance with consumer protection and fair lending laws and regulations.
   - Training of Directors and senior management regarding compliance and fair lending issues.
   - Rationale for implementing new policies or procedures or modifying existing ones.
   - Any negative comments on rejected loan applications during loan committee or any other meeting (such records must be traced to the specific loan file to assure that no unlawful disparate treatment or discrimination was involved in the denial).
   - Consideration of new loan or deposit products and strategies for their implementation.
   - Consideration of new software or software vendors.
   - Consideration of third parties for compliance audit.
   - Approval of, and rationale for, branch openings and closings.
   - Whether the Board documented a review of the prior Report that included, as applicable: a discussion of recommendations for policy changes, an adoption of those revisions, and a report regarding corrective action and subsequent testing for identified violations
2. Based on the material reviewed during PEP and on-site, and based on discussions with management, answer the following questions:
   - What is the bank's business strategy and what are the compliance implications of that strategy (for example, elevated risk due to rapidly growing subprime lending, cutting-edge e-banking activities, etc.)?
   - What particular compliance-related areas does management feel are weak or in need of review?
   - Have the Board and senior management worked to foster a positive climate for compliance?
   - Has management allocated the appropriate level of resources to compliance?
   - Does the institution have a designated compliance officer and/or compliance committee? If not, is the absence of an officer or committee significant in light of the institution's resources and risk profile?
   - Has management ensured that the compliance officer(s) and/or compliance committee has the appropriate level of authority and accountability to effectively administer the institution's compliance management system?
   - Has management responded appropriately and promptly to consumer complaints?
   - Has management responded appropriately to deficiencies noted and suggestions made at previous examinations and audits?
   - How does management stay abreast of changes in regulatory requirements and other compliance issues? Is this method appropriate in light of the institution's resources and risk profile?
   - How does management ensure that the institution's staff stays abreast of changes?
   - How does management ensure that compliance is considered as part of new product and service development, marketing, and advertising?
   - How does management ensure that due diligence is performed prior to changing software or software vendors or third party audit providers?
   - What is the level of management's knowledge of compliance issues?
   - Does the review of the Board and/or Compliance Committee minutes indicate a reasonable level of Board involvement?
   - Is the Board aware that it is ultimately responsible for the institution's compliance management system?
3. Develop and document a preliminary assessment of the institution's performance related to this area. Is management oversight generally strong, adequate, weak? On what is this assessment based?

Evaluating the Compliance Program

Policies and Procedures

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to policies and procedures, including the institution's business strategy, product offering, branches, etc.;*

- *Compliance-related policies and other written compliance procedures;*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

Policies and procedures, whether written or unwritten, should cover all of the areas listed below. A financial institution may have other policies or procedures related to compliance not listed here that should be included in the examiner's review, depending on the institution's activities and risk profile.

- Compliance Policy – This may be a single document or a compilation of various documents each relating to specific areas of institution activity. In addition to specific guidance on daily compliance activities, the policy should provide for an adequate level of responsibility and authority for the compliance officer, compliance committee, and individual employees.
- Lending – Often, institutions will have separate policies for various lending types such as consumer, real estate, commercial, agricultural, etc. All should be reviewed during PEP.
- Deposits – Institutions often have separate policies for Regulation DD, Regulation E, Regulation CC, and Part 329.
- Electronic Banking – The adequacy of e-banking policies should be assessed in light of the level of activity in which the institution is engaged.
- Privacy – Institution privacy policies and procedures vary widely, depending on the level of information sharing involved.
    - Non Deposit Products – Policies and procedures must provide adequate guidance for the sale of investment and insurance products by bank employees (including loan officers who sell insurance during the loan process), dual employees, and on-site non-employee brokers.
    - Branch Closing Policy – Section 42 of the Federal Deposit Insurance Act requires every financial institution to maintain a branch closing policy.

In order to ensure an accurate assessment of the institution's compliance management system, each policy and procedure must be reviewed during PEP or at the institution unless all the following are true: 1) the policy was reviewed at the prior FDIC compliance examination, 2) the review of the policy at the prior examination found no deficiencies, 3) no changes or amendments have been made since the policy was last reviewed, and 4) there have been no significant regulatory or operational changes pertinent to the area covered by the policy since the prior examination.

1. Conduct sufficient documentation reviews and management discussions to answer the following questions.
    - What areas of compliance do written policies or procedures cover?
    - Which policies or procedures are unwritten?
    - Is the use of unwritten policies/procedures adequate for the institution's needs?
    - Do the policies give effective guidance to institution employees?
    - Are policies and procedures structured and implemented in such a way as to ensure fair and equitable treatment of all consumers?
    - Do the policies assign compliance responsibility? Are the assignments logical and reasonable given the time and resources available to those employees?
    - Do the policies provide appropriate authority to employees responsible for identifying and correcting deficiencies?
    - Are the policies and procedures established in such a way as to ensure a smooth transition in the case of key personnel turnover?
    - Are policies, procedures, and standardized forms periodically reviewed and updated in response to regulatory changes and changes in the institutions risk profile? How frequent are the reviews?
    - Does the Board review and approve all changes to policies and procedures? If not, is the level of approval appropriate given the examiner-determined institution risk profile?
    - Are there any practices that have become policy by virtue of the frequency of their occurrence? If so, do these practices conflict with formal policies or procedures?

NOTE: Additional guidance for the review of loan and appraisal policies is located in the Fair Lending Examination Procedures.

2. Determine whether the institution's policies and procedures provide the appropriate level of guidance for all employees and include clearly defined goals and objectives.

3. Develop and document a preliminary assessment of the institution's performance related to this area. Are policies and procedures considered generally strong, adequate, or weak? On what is this assessment based?

Training

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to training;*
- *Compliance-related training documentation;*
- *Examiner notes from discussions with compliance officer, senior managers, etc.*

1. Review the institution's training records and have sufficient discussions with management to answer the following questions:
   - Does every employee receive appropriate training given his or her compliance responsibilities?
   - How often is training conducted? Is the frequency of training acceptable?
   - Is the training program continuously updated to incorporate accurate, complete information on new products and services, regulatory changes, emerging issues, etc.?
   - Is the effectiveness of the training evaluated by management through delayed testing, before-and-after work product reviews, or other means?
   - Regardless of whether staff training is conducted primarily in-house or is out-sourced, does management evaluate whether the institution's training needs are being met? As EIC, do you agree or disagree with management's conclusions?
2. Develop and document a preliminary assessment of the institution's performance related to this area. Is the institution's training considered generally strong, adequate, or weak? On what is this assessment based?

Monitoring

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to monitoring;*
- *Compliance-related policies and other written compliance procedures;*
- *Documentation of the results of monitoring activities;*
- *Formal and/or informal reports to management of the findings, corrective actions, and related follow-up from monitoring procedures; and*
- *Examiner notes from discussions with the compliance officer, senior manager, etc.*

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - What monitoring systems are in place for loan transactions? Deposit transactions? Investment and insurance sales activities?
   - Is every transaction subject to monitoring? If not, what is the level of transactional review? Is the level of monitoring adequate?
   - Does monitoring include a review of the performance by third party service providers?
   - Are the appropriate personnel conducting the monitoring (i.e. someone with daily involvement in the monitored area and who has received adequate training)?
   - How are errors that are identified during the monitoring process documented?
   - How are the errors corrected?
   - Is there appropriate follow-up when errors are identified (i.e. refresher training, disciplinary action)?
2. Determine whether the institution's monitoring efforts encompass all applicable regulations.
3. Develop and document a preliminary assessment of the institution's performance related to this area. Is the institution's monitoring effort generally strong, adequate, or weak? On what is this assessment based?

Consumer Complaint Response

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to consumer complaints;*
- *Consumer complaint policy or other written compliance procedures regarding complaints;*
- *All files related to the receipt and resolution of compliance-related consumer complaints archived by the institution or the FDIC, including information from the FDIC's automated complaint tracking system (STARS);*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - Has the institution implemented policies and procedures to handle consumer complaints?
   - If policies and procedures are in place, do they comply with all regulatory requirements regarding complaints (maximum time limits for response, documentation requirements, etc.)?
   - If the institution has received consumer complaints, have all complaints been resolved satisfactorily?
   - Cross-referencing the complaints to all other areas of the compliance management system, does the type or

quantity of complaints suggest any other areas in need of in-depth review?

2. Develop and document a preliminary assessment of the institution's performance related to this area. Are the institution's consumer complaint response processes generally strong, adequate, weak? On what is this assessment based?

Evaluating the Audit Function

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to the audit function.*
- *Audit policy, external audit agreement, or other written audit guidelines;*
- *Compliance-related internal and external audit reports, responses, and follow-up;*
- *Internal and external audit workpapers;*
- *Institution organizational chart;*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with audit staff, compliance officer, senior managers, etc.*

Exception: Do not request fair lending self-testing reports (or results). If, however, a financial institution voluntarily provides documentation of its fair lending self-testing, review the findings as part of the fair lending examination.

NOTE: A financial institution's audit or review of loan files, internal policies, and training material may indicate difference in the treatment of applicants that could constitute a violation of the fair lending laws.

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - Are internal audits conducted? How often and by whom?
   - If internal audits are conducted, is the auditor independent of the transaction being audited? If not, is this considered acceptable considering the institution's resources and risk profile?
   - Are external audits conducted? How often and by whom?
   - Are internal/external audits comprehensive in scope? If audits are not comprehensive, do they cover all areas of significant risk? Do they include reviews at every branch location?
   - Are audit findings compiled in writing? Do they identify the nature and circumstances (i.e., cause, time period, etc.) of the identified exceptions? Do they provide management enough information to (1) determine cause and (2) formulate an appropriate corrective action?
   - Are internal/external audits of sufficient quality?
   - Are the audit findings communicated to the Board either directly or through the compliance committee?
   - Have audit report findings been appropriately addressed by the Board and senior management in a timely manner and include corrective actions and follow-up efforts?
   - Are written audit reports readily available for examiner review?
2. Develop and document a preliminary assessment of the institution's performance related to this area. Is the audit function generally strong, adequate, or weak? On what is this assessment based?

Transaction Sampling and Testing

After analyzing the CMS elements in relationship to a bank's operational risks, the EIC must decide what transaction sampling and testing is necessary. The number of transactions and the particular regulatory requirements to be reviewed should be carefully tailored to weaknesses identified in the CMS as it relates to specific operational areas. For example, if there is a weakness in monitoring the calculation of Annual Percentage Rates (APRs) in open-end credit transactions, then a sample of those calculations should be tested; it would not be necessary to test all Truth in Lending Act (TILA) requirements.

The severity of CMS weakness and operational risk will dictate the intensity of transaction testing; greater weakness and higher risk will generally lead to the review of more transactions. If the examiner finds a moderate degree of risk, then sufficient testing should be done to support a conclusion. Depending on the importance of an element, the examiner may find it appropriate to spot-check a couple of transactions to support a favorable conclusion. If no transaction testing in a particular regulatory area was done in the previous examination, then at least a spot-check should be done at the current examination, even if there are no risk indicators. In certain cases, however, management's admission that a violation occurred is sufficient to warrant the citation without transaction testing. This also negates the need to list specific transactions in the Report of Examination (ROE).

When transaction sampling and testing is conducted, the examiner should tailor the actual sample and test to the identified weakness. If testing is not considered necessary to support conclusions about an element of the CMS or with respect to a particular operational area, appropriate documentation should be retained in the workpapers and

comments should be included in the Risk Profile and/or ROE to support this conclusion.

Consultation Policy

Consultations between Field, Regional and Washington staff members help maintain the quality and consistency of compliance, fair lending and CRA examinations and supervision. Consultation alerts senior DSC officials to significant or unusual supervisory issues, which ensures that these issues receive appropriate and timely consideration. Current information from examiners in the field also helps the FDIC and interagency groups develop more realistic policies and regulations.

Depending on the issue, a consultation may be anything from a simple phone conversation or a series of e-mails, to formal memoranda. Examination staff should consult with regional or field office management or staff if they find an unusual issue or problem. In turn, regional or field office management and staff are encouraged to consult with Washington subject matter experts, particularly with respect to findings, issues or potential violations requiring guidance with respect to new regulations, or involving emerging/sensitive policy concerns.

Certain situations, because of their sensitivity or potential impact, mandate that the Regional and/or Washington office(s) be consulted. Actions that require either approval or concurrence under delegated authority or DSC policy also require formal documentation.

If a consultation results in an outcome inconsistent with the examiner's recommendation, then the examiner and the review examiner should ensure that the language of the ROE is consistent with the final outcome.

References

DSC RD Memo 04-017: Consultation Policy and Procedures for Compliance Examination and Community Reinvestment Act Issues
http://fdic01/division/dsc/memos/memos/6000/04-017.pdf

(This page intentionally left blank.)

Communicating Findings

Closing Management Meeting

A closing meeting must be held with senior management at the conclusion of any on-site compliance/CRA examination or review. An on-site review includes:

- Fair Lending or other consumer complaint investigations;
- Visitations; or
- Other Special Reviews.

Attendance by financial institution representatives other than management is at the discretion of senior management. These may include: consultants, counsel, accountants, holding company officers, directors, and employees who work directly with consumer protection laws or CRA. When practical, at least two FDIC representatives should be present at the closing meeting.

Management must be informed that examination findings, including compliance/CRA ratings, are not final until the appropriate reviews are conducted by review staff, Field Supervisors, and/or the Regional or Washington Offices, as applicable.

Regional Offices should generally approve any enforcement action recommended by the examiner through consultation prior to the meeting.

The closing meeting should be used to:

- Summarize examination or review findings. All critical issues should be discussed. If significant issues arise subsequently, these should be discussed with senior management either in person or by telephone. If senior management presents significant new information at the closing meeting, additional review by the examiner may be required. In such instances, the examination process should be left open for further review of applicable regulatory issues, the institution's records, and a possible second meeting with management.
- Discuss, when appropriate, positive findings to reinforce the institution's compliance/CRA efforts.
- Provide recommendations to address identified weaknesses or deficiencies.
- Obtain management's response(s) and commitment(s) for corrective action for deficiencies noted in the compliance management system and for cited violations.
- Advise management of recommended compliance and CRA ratings, as well as any recommendations for formal or informal enforcement actions and civil money penalties.

The agenda for the closing meeting should indicate the order of discussion items based on their significance to the overall conclusions. The agenda should also include a tentative listing of violations, and to the extent possible, draft copies of the pertinent violation sections of the Report of Examination should be provided. A copy of the agenda should be filed with the workpapers.

Board Meeting

The purpose of a meeting with the financial institution's Board is to convey the pertinent findings of the examination directly to persons ultimately responsible for the operating policies and procedures of the institution. Board meetings should be conducted after the closing meeting with management, and should be attended by at least a quorum of Directors/trustees. The EIC, Field Supervisor, and/or Review Examiner or senior member of the Regional Office staff should attend, as applicable. Board meetings are required when one or more of the following circumstances are present:

- Significant problems that require consultations with the Regional Office (refer to the Consultation Policy for further information);
- An informal or formal enforcement action is recommended;
- The proposed compliance rating is "3," "4," or "5";
- The proposed composite CRA rating, state rating, or multi-state rating is "Needs to Improve" or "Substantial Noncompliance"; or
- The institution's management or Board requested such a meeting.

A Board meeting is not required for:

- Visitations;
- Consumer complaint investigations; or
- Other on-site reviews.

The Board meeting should be used to discuss examination findings and to advise the Board of the recommended compliance and CRA ratings and when applicable, any recommended enforcement actions. When significant issues requiring consultations with the Regional Office are present, the appropriate requirements of the consultation policy should be followed prior to scheduling the Board meeting.

Generally Board meetings should be conducted before the examination report is forwarded to the appropriate staff for review; however, in special circumstances, the meeting may be conducted after the report is forwarded for review. If this occurs, the EIC should prepare a memorandum to the Regional Director summarizing the pertinent issues from the Board's discussion for inclusion in the Report of Examination.

During concurrent examinations with Risk Management (RM), closing management and Board meetings must

be coordinated with RM examiners. Presentations to the Board should be planned for regularly scheduled meetings, whenever possible. Requests from management, such as for separate meetings, should be considered and reasonably accommodated.

Report of Examination

Introduction

The Report of Examination (ROE) communicates the results of a compliance examination to the Board of Directors and senior management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution's compliance management system, presents findings and violations (if any) in order of significance and as they relate to the compliance management system, and offers recommendations for addressing deficiencies and improving future compliance risk management performance. The Report of Examination is a stand alone document that details the:

- scope of the examination;
- compliance rating;
- examiner's comments and conclusions on compliance management, including recommendations for corrective action and management's response to the findings and recommendations; and
- significant violations and other matters of supervisory concern.

This section identifies minimum documentation and administration requirements for completing a ROE. Specifically, it provides guidance on:

- Format of the Report
- Content of the Report
- Supervisory Comments
- Review of the Report

Format of the Report of Examination

The ROE should be organized as follows:

- Transmittal Letter
- Cover Page
- Examiner's Comments and Conclusions
  - Scope of the Examination
  - Consumer Compliance Rating
  - Compliance Management
  - Board and Management Oversight
  - Compliance Program
  - Audit
  - Recommendations
  - Enforcement Actions (if applicable)
  - Community Reinvestment Act Examination (if applicable)
  - Meeting with Management
- Significant Violations Page(s)
- Supervisory Comments (if applicable)

The following is substantive guidance pertaining to the various sections of the ROE.

Content of the Report of Examination

The overall tone of the ROE should be consultative and its content designed to educate the Board and management. The ROE should contain sufficient information to support the rating, conclusions and recommendations. However, it is not necessary to provide lengthy factual summaries of policies, procedures, management structure or the like. The ROE must assess the strengths of the banks compliance management system, clearly identify the most critical deficiencies and related causes, and aid the Board and management in developing an action plan to address the findings. The report should be informative and, regardless of the institution's consumer compliance rating, concise. Findings should be presented in order of significance, with greater detail provided about the most serious matters.

Only significant findings and violations are to be reported in the ROE. These matters represent the highest degree of risk to the institution or its customers and require management's immediate attention.

Significant findings include weaknesses in one or more components of an institution's compliance management system that:

- result, or could result, in a significant violation of federal consumer protection laws and regulations;
- result in a large number of isolated violations; or
- result in a continuation of a compliance management system deficiency cited at the previous examination.

Fair lending matters should be incorporated in the ROE. Fair lending should be specifically noted in the scope section of the ROE, and the findings incorporated in the other sections of the ROE as appropriate.

The EIC should use the subheadings below to emphasize important issues and provide structure and organization to the ROE.

Scope of the Examination

This section of the ROE contains the following elements:

- Date of the examination, review period covered, and name of the examiner-in-charge;
- Type and purpose of the examination ;
- Compliance management, operational, and regulatory areas reviewed;
- Methods used to review CMS and operations; and
- Offices visited.

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. In addition to the rating, the EIC should provide a brief description of the principal factors that contributed to the assigned rating and a statement about the overall improvement or decline of the institution's compliance posture since the last compliance examination.

Compliance Management

This section of the ROE discusses the overall quality of the institution's compliance management system and the EIC's conclusions regarding the Board and management's ability to effectively meet its compliance responsibilities, along with recommendations for corrective action. The EIC will identify compliance system strengths and weaknesses, and explain significant findings and regulatory violations. Explaining the cause and severity of program deficiencies or violations is critical to proposing appropriate changes or corrective actions that will be accepted by management and will prevent recurrences.

The analysis should support the consumer compliance rating assigned to the institution. In particular, the examiner should take the opportunity to relate the Board's and management's oversight of the institution's compliance management system to the overall results of the examination and the general compliance posture of the institution.

This section should discuss the EIC's conclusions relative to each of the three elements of a compliance management system:

- Board of Directors and senior management oversight;
- Compliance program; and
- Audit function.

The discussion for each compliance management system element should begin with a summary statement about the quality of the financial institution's compliance management practices (e.g., strong, adequate, or weak). The summary statement should be followed by more detailed comments that explain the examiner's findings and conclusions. Both positive and negative aspects of the institution's management of its compliance responsibilities should be discussed. If the institution's compliance management system element is strong, the EIC should briefly explain why. The discussion should explain the relationship between deficiencies in the compliance management system and significant violations that resulted, or could result, from such deficiency. Any consequences of violations cited during the examination should also be communicated, such as Truth in Lending reimbursements, administrative enforcement actions, or potential civil liability.

The EIC's comments should address any deficiencies noted in the following areas:

- Management's compliance knowledge, ability, and commitment;
- Organizational and reporting structure of the compliance management system;
- Knowledge, experience, and effectiveness of the compliance officer or staff with compliance responsibilities;
- Changes in personnel, technology, or service providers;
- Scope and adequacy of compliance policies, procedures, and training;
- Ability to identify, monitor, and correct compliance system deficiencies and regulatory violations; and
- Frequency and effectiveness of the compliance audit function.

At the conclusion of the discussion for each compliance management system element, the EIC should identify the statute(s) or regulation(s) from which significant violations have been cited as a result of the deficiencies in the compliance management system element. The reader should be referred to the Significant Violations pages for further details on all significant violations found during the compliance examination.

In the case of reimbursements, the EIC should state the total reimbursable amount when reliable estimates have been determined. Otherwise, when reliable estimates of the total reimbursable amount are not available, state so and provide an estimate based upon the examiner's calculations. Also, provide the assumptions on which the estimate is based.

Recommendations for Corrective Actions and Management Response

The EIC should provide the Board and management with constructive recommendations for corrective actions that address the specific deficiencies noted in the narrative of the ROE. The recommendations should be appropriate in light of the size and complexity of the institution's operations. The recommendations should enable the institution to resolve current compliance management system deficiencies and

regulatory violations, and to minimize future violations by making improvements to its compliance management system.

Examiners should use this section to provide guidance and advice to a financial institution relating to its director and management oversight, compliance program, and audit function (e.g., making specific suggestions to improve the institution's method of educating employees about their compliance responsibilities). Ultimately, the Board and management of the institution are responsible for determining the actions they will take to address the examination findings. However, the recommendations should be written in a way that demonstrates to the Board and management the importance and value of taking the corrective action.

The EIC should discuss any corrective action taken or promised by the Board or management, and the time frames for promised action. The EIC should consider identifying by name those individuals who commit to specific corrective actions, in order to assist in follow-up efforts at future examinations. Place this discussion, in an italic font, after each recommendation as a "Management Response." Alternatively, an overall "Management Response" comment may be provided after all recommendations, if management's position is similar on all of them.

Enforcement Actions

When administrative enforcement actions are contemplated by the EIC, the ROE should inform the Board of Directors that the EIC plans to recommend to FDIC management that an enforcement action be taken against the institution. The Board should clearly understand the issue and the type of potential enforcement action.

This section should also discuss how management has addressed and/or resolved outstanding enforcement actions. The EIC should include the type of enforcement action and the date the enforcement action was issued or, in the case of a bank Board Resolution, adopted.

A list of each provision of the applicable enforcement action and a brief discussion of the financial institution's compliance with each provision should be included, as well as the examiner's recommendation on whether the enforcement action should be continued, removed, or changed to another type of enforcement action.

If a visitation was conducted between examinations, and a Visitation Report was forwarded to the financial institution detailing compliance with the provisions of the enforcement action, the examiner need only address the remaining outstanding provisions of the enforcement action. The examiner should also refer to the Visitation Report.

Comments and Conclusions on Community Reinvestment Act Examination

This section should be included if a concurrent Community Reinvestment Act (CRA) examination was conducted. State the bank's CRA rating, and briefly discuss the basis for it. The comments should refer the reader to the CRA Performance Evaluation.

Meeting with Management

Under this section, provide the following:

- Date of meeting with management;
- Names and titles of financial institution attendees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should specifically address management's disagreement with the recommended consumer compliance rating and any proposed enforcement action(s), if applicable, and the reasons for the disagreement. In addition, the EIC should provide comments on management's willingness to make Truth in Lending reimbursements. Management's response to the Community Reinvestment Act rating or performance evaluation should be discussed also.

If a meeting is held with the Board of Directors/trustees, provide the following:

- Date of the meeting with the Board of Directors;
- Names and titles of Directors/trustees in attendance;
- Names and titles of persons in attendance at the request of the institution's directors/trustees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should discuss the Board's response to the examination findings. It should include, as applicable, any corrective actions promised by the Board and/or any indications on the part of the Board that they will agree to a proposed enforcement action (formal or informal).

Significant Violations Page(s)

The Significant Violations Page(s) serve as the institution's official record of all significant violations cited during the examination. They should readily call attention to the general nature and magnitude of these matters. Each violation should be related to the underlying deficiency in the component(s) of the institution's compliance management system that allowed the violation to occur so that the Board and management may take meaningful corrective actions to improve the institution's compliance risk management. All findings and violations should be addressed in descending order of importance.

Significant violations are violations of a specific law or regulation that individually or collectively represent serious concern for the financial institution. Significant violations include those violations that meet any of the following criteria:

- Recurrent and outstanding for an extended period of time;
- Affect, or could affect, a large number of transactions or consumers in a way that has, or could have, severe consequences for the consumers or the financial institution;
- Willful act or omission to defeat the purpose of or circumvent law or regulation; or
- Continuation of a violation cited at the previous examination, and is repeated in exactly the same manner at the current examination.

Violations deemed to be truly isolated, inadvertent, and not indicative of an institution's practices should not be considered significant and not discussed in the ROE. They should, however, be reported to the bank for correction, and recorded on SOURCE as "other" violations.

The examiner should include the following elements, as applicable, for each significant violation cited during the examination:

- A summary of the regulatory section and the six digit violation code obtained from the Automated ROE Violation Code Directory;
- How the institution's practices differed from the requirements of the regulatory section;
- Compliance management system deficiency(ies) that allowed the violation to occur;
- Corrective action taken by the institution before or during the examination (indicate if a previously identified violation remains unchanged since the previous examination);
- Corrective action recommended by the EIC;
- Management's response; and
- Sample size and number of violations identified in the sample, and two or three examples for each violation. (This requirement is not applicable to standardized disclosures or public notices, or in cases in which management admits to the violation before transaction sampling is performed).

Special Rule for Reimbursable Truth in Lending Violations

Include reimbursable Truth in Lending violations under a separate heading, "Reimbursable Truth in Lending Violations", in the Significant Violations pages. In the SOURCE System, ensure that these violations are appropriately coded as "reimbursable".

In the text of the violation write-up, supply the following information to support the presence of a "pattern or practice" for each type of reimbursable Truth in Lending violation:

- Type of loan;
- Special characteristics or features, if any; and
- Number of loans sampled with reimbursement violations.

For violations involving both understated Annual Percentage Rates (APR) and Finance Charges (FC), identify the larger of the reimbursable amount.

In addition to the above information, forward to the Regional Office the following for each type of reimbursable violation cited (as applicable):

- APR calculation printouts;
- TIL disclosures;
- Contract note;
- Commitment letter;
- HUD-1/1A Forms;
- Private mortgage insurance agreements;
- Interest rate indices;
- Trial balances, loan history, or payment record showing first payment and at least one subsequent payment;
- Itemization of amount financed (if separate)/Good Faith Estimate;
- Amortization schedule; and
- Any other documentation supporting adjustments to the amount financed (e.g., credit insurance application forms, etc.).

Supervisory Comments

The purpose of the Supervisory Comments is to provide the FDIC Regional and Washington Offices and other banking regulators with confidential or controversial information. It also provides information to succeeding examiners on supervisory and examination activities relating to the institution. The Supervisory Comments are not included in the ROE transmitted to the financial institution.

Most of the information that examiners traditionally placed on this page can now be found in SOURCE or in the examination workpapers. However, examples of information that continues to be important to report on this page include:

- Planned changes in key management positions or compliance personnel that are not widely known in the institution;
- Pending litigation on a consumer protection matter that is not widely known in the institution; and

- Tentative plans or strategies that are not widely known in the institution that may affect the frequency or scope of future compliance examinations.

When there are no issues to discuss, or all information is accessible in SOURCE or the examination workpapers, exclude this page.

Review of the Report of Examination

The EIC must complete and put the following documents into SOURCE for review:

- Transmittal Letter;
- Cover Page;
- The ROE;
- Significant Violation Pages (if any);
- Supervisory Comments (if applicable); and
- Updated Risk Profile and Scope Memorandum.

Reviewers should question any gaps, inconsistencies, or any unsupported or unexplained conclusions contained in the compliance Report of Examination or any other document informing the institution of a FDIC material supervisory determination. The assigned Review Examiner (RE) and the EIC must strengthen any weak areas with supporting data before the compliance Report of Examination or document is submitted to the institution.

Communication between the FDIC and the financial institution should occur if, during the review process, the examiner's recommended rating is downgraded or the examiner's conclusions are changed, adversely affecting the financial institution.

Subsequent to final approval of the ROE, the Cover Page, Transmittal Letter, ROE, and Significant Violations pages should be delivered to the Board of Directors of the financial institution.

The EIC should coordinate with the Field Supervisor (FS) to ensure that all SOURCE submission requirements are met.

Documenting the Examination

Introduction

Examination documentation should demonstrate a clear trail of decisions and supporting logic within a given area. Documentation should provide a written record of the examiner's decisions and analysis, and provide support for assertions of fact or opinion in the Report of Examination. A well-constructed examination documentation file will provide sufficient data to reconstruct the examiner's decision process for each step of the examination. This includes support for the examiner's decision to include or exclude a regulation or area of review from the scope of the examination, as well as providing documentation of significant findings.

It is vitally important that appropriate, relevant workpapers are maintained at the field office to support:

- Review of the report of examination;
- Expanded explanations of significant findings in the event of subsequent enforcement action or appeals of supervisory determinations;
- Development of a supervisory plan;
- A current risk profile; and
- Developing the scope of future examinations and limiting future information and document requests of the institution.

Documenting Findings

1. If files or documents relating to certain regulations were spot-checked and no problems were found, then it should be noted in the Scope Memorandum chart. An Examiner Summary is not necessary.

2. Prepare an Examiner Summary for each regulation or area reviewed (separate Examiner Summaries for each CMS element – Management Oversight, Program, and Audit—are not necessary since each element should be fully described in the ROE and/or the Risk Profile). The Examiner Summary, in conjunction with the Risk Profile and Scope Memorandum, will allow subsequent readers to clearly identify the scope of work performed and the basis for the examiner's conclusion.

   Include:

   - A statement indicating the scope of the review and describing the examination procedures used. Copies of the procedures, marked to indicate the portions used, may be substituted for the description.
   - Examiner's conclusion(s) for the area of review including significant findings and their impact on the CMS rating, brief commentary regarding the contents of all documents reviewed, and any deficiencies or violations noted during the examination that are not contained in the ROE.
   - An inventory of documents reviewed. The inventory should indicate which documents were copied for the workpapers and which were not. Generally, the examiner should maintain all discussion notes and all copies of bank documentation obtained during the examination. Exceptions can be made for irrelevant material or bulky items that have limited audit trail value. A copy of any document which is being directly criticized, or which supports a criticism made during the examination, must be maintained in the workpapers.

NOTE: At the EIC's discretion, multiple regulations may be aggregated. For instance, it may be appropriate to combine all mortgage loan-related regulations in one Examiner Summary.

Examiner Summaries are not necessary for areas not reviewed because of inapplicability. For example, if the institution does not engage in consumer leasing activities, a comment to that effect will be included in the Risk Profile and no Examiner Summary is required.

3. When a violation of a specific regulation has been identified, then:
   - Ensure that appropriate workpapers are fully completed, and that supporting documentation is attached. The use of standardized workpapers is optional. Regardless of the format used, the workpaper and documentation should be sufficient to enable an examiner having no previous connection with the examination to ascertain the evidence supporting the significant conclusions, judgments, cited violations, and compliance with any outstanding enforcement action.
   - Assign a violation code to each violation identified during the examination. All codes, for both Significant Violations and Other Violations not detailed in the Report, should be uploaded through SOURCE at the completion of the examination.

4. Ensure that the workpapers include clear and legible notes from discussions with management. All responses to examiner questions should be readily attributable to specific members of management. Specific comments made by management that are relevant to a significant finding should be marked or highlighted accordingly.

5. Attach to the relevant workpapers the documentation for each finding noted in the Report of Examination.

   For example:

   - A copy of the relevant portion of the bank's compliance policy which stipulates procedures that are in contradiction to the procedures actually performed, according to discussions with key personnel.

- Copies of notes and related disclosure statements for violations of Regulation Z, Truth in Lending.
- Copies of adverse action notifications for violations of Fair Credit Reporting Act and/or Regulation B, Equal Credit Opportunity.
- Copies of completed hold notices where the financial institution failed to make $100 available at the start of the next business day in violation of Regulation CC, Expedited Funds Availability.

NOTE: For any violations cited as systemic or a pattern or practice, the examiner need only attach enough copied documents to support this conclusion.

General Procedures

1. Label workpapers with the following:
   - Name of financial institution
   - Certificate number of financial institution
   - Date of examination
   - Name of Examiner-in-Charge
   - Name of the examiner/assistant examiner who completed the workpaper
   - Location of the branch/office, if applicable
2. If the workpapers are revised in any manner after completion of the examination, such revisions should be clearly documented on the workpaper.
3. Checklists provided in this Handbook or obtained elsewhere are optional. The examiner has the option of completing relevant portions of the checklists or using them merely as a guide. If used, they should be maintained in the workpapers, as they help document the procedures performed during the examination.

Filing Workpapers

1. Segregate workpapers by either regulation or examination procedures performed, for example, "Truth in Savings" or "Loan File Review." At the EIC's discretion, the workpapers may be aggregated by CMS element.
2. Label overall workpaper box, folder, envelope, or binder appropriately with the following:
   - Name and location of financial institution
   - Certificate number of financial institution
   - Date of examination
3. Always include with the final workpapers an index or table of contents that readily identifies the location of all workpapers and supporting documentation. For example, the workpaper index should indicate that the FDIC copy of the Loan Policy is located in the Policy Review workpaper folder.
4. Organize and promptly convey the examination workpapers to the field office or other designated storage location at the conclusion of the examination.
5. The EIC should:
   - Review workpapers to ensure that they are accurate, legible, and complete.
   - Determine that appropriate bank documentation, where applicable, has been attached and retained in the workpapers.
   - Confirm that workpapers are appropriately organized and filed.

Retention

Retain workpapers for a period of at least two years or until the next examination, whichever is later. Retain workpapers for longer periods in the following instances, until corrective action or other resolution is complete:

- Truth in Lending violations requiring reimbursement;
- Fair lending violations resulting in referrals to the Department of Justice or Department of Housing and Urban Development;
- Any type of enforcement action that has been placed on or remains outstanding against the financial institution;
- A criminal referral has been made regarding the institution or any of its directors, trustees, management, or employees; and
- Other reasons, at the discretion of the Regional Director or Field Supervisor, for which the retention of documents and workpapers is required.

Consult the FDIC Records Schedule directives for further information.

SOURCE

SOURCE is the system of record for the compliance and CRA examination program and is extensively used by compliance field supervisors, examiners, review examiners, and Washington Office policy staff. SOURCE is used to support reporting requirements, provides substantial task support for staff, and is a management support and decision tool. Among other functions, SOURCE:

- Generates examination schedules that are used to support workload projections by incorporating quarter planning and benchmark hours;
- Provides information to facilitate the pre-exam process;
- Captures examination summary information;
- Attaches examination documents for divisional sharing and historical reference;
- Tracks information through the consultation process; and

- Facilitates the reporting of examination data for legislatively mandated reporting.

Information in SOURCE should be complete, accurate, and timely.

- Examiners and reviewers should ensure that the most current versions of documents are attached and labeled correctly. For example:
  - Transmittal Letter
  - Page 1 Examiner's Comments and Conclusions
  - Significant and Other Violations Pages (if any)
  - Page A (if applicable)
  - Enforcement Action Memoranda and Letters (if any)
  - CRA Performance Evaluation
  - Fair Lending Memorandum
  - Final Risk Profile and Scope Memorandum (document must be updated at the conclusion of the examination to reflect the final Risk Profile of the bank and the actual scope of the examination);
- Examiners and reviewers should ensure that all required information fields are completed at the conclusion of the examination;
- Supervisors should plan examinations and visitations in advance and indicate the quarter for which the activity is planned; and
- Examiners-in-charge, or their designees, should update the examination On-Site Date as soon as possible.

Job Aids

SOURCE Main Page
http://fdic01/division/dsc/tech/source/index.html

SOURCE Help/Job Aid
http://fdic01/division/dsc/tech/source/help.html

How to Request Access to SOURCE
http://fdic01/division/dsc/tech/source/accessreq.doc

(This page intentionally left blank.)

Investigations and Visitations

Investigations

Consumer Complaints

Consumer complaint investigations are generally handled by Consumer Response Center staff. Examiners will be requested to assist if an on-site review is determined to be necessary. As with all sensitive matters, close cooperation between staff in the field office, region and Washington is essential to a prompt and appropriate resolution of a complaint.

Revised FDIC procedures for investigating complaints of illegal discrimination were circulated in February 2003, and replace those previously found in both the Compliance Examination Manual and the Complaint and Inquiry Manual. The revised procedures must be used by all DSC staff involved in a discrimination investigation.

Although directed at discrimination complaints, the general approach of the revised investigation procedures may be applied to other types of complaints.

Enforcement Actions

To obtain information or evidence necessary to support an enforcement action, a formal investigation may be conducted pursuant to Section 10(c) of the FDI Act. Through such an investigation administrative subpoenas may be issued for information or testimony. Orders of Investigation must be developed in cooperation with the Legal Division, which shares delegated authority for this process.

Visitations

Introduction

Visitations are usually targeted events aimed at specific operational or regulatory areas, but can also focus on compliance management systems that require more than the normal level of supervisory attention. Visitations are conducted by the FDIC to review the compliance posture of an institution that is newly chartered, involved in a recent or proposed merger, or recently converted to state nonmember status; to review an institution's progress on corrective actions since its last examination; to ascertain an institution's compliance with an enforcement action; and to investigate problems brought to the FDIC's attention.

Conducting a Visitation

Visitations can be scheduled at any time at the discretion of Regional Office management. Prior approval of Washington Office management is required when substituting a visitation for an examination of an institution with adverse compliance or CRA ratings.

Visitations may be expanded to a regular compliance/CRA examination with the Examiner-in-Charge's recommendation and Regional Office management's concurrence. This recommendation should be considered in situations where:

- Significant deficiencies are noted in a financial institution's compliance management system or CRA policies or procedures;
- Significant noncompliance is noted particularly regarding previously criticized areas; or
- Significant noncompliance with an informal or formal enforcement action is noted.

Regional compliance management may change an institution's compliance rating if interim events, visitations, investigations or similar situations result in finding that the assigned rating is no longer suitable and that a different level of supervisory concern is warranted. Ratings may be moved up or down. Decisions to change a rating must be based on a review that considers whether the institution's compliance with consumer protection and civil rights statutes and regulations display weaknesses requiring special supervisory attention and which are cause for more than a normal degree of supervisory concern. Changes in compliance ratings will be rare. Any change must be carefully documented and consultation with the Washington Office is required. The bank should be notified of the change and the basis for it.

General Procedures

1. Perform appropriate off-site review and analysis procedures prior to the commencement of the on-site visitation. Tailor the visitation to address the compliance deficiencies or concerns identified, or the matters under review. A Risk Profile and Scoping Memorandum is not required.
2. Notify the institution of the date of the visitation.
3. Conduct the on-site visitation. An initial meeting with management should define the scope of the visitation.
4. If applicable, prepare a list of violations. Examiners will use the violations pages from the Report of Examination and include these pages with the visitation report submitted to the Regional Office.
5. Consult as appropriate or required with the Field, Regional or Washington office.
6. Conduct a closing meeting with management and, if the situation warrants, a meeting with the Board. Leave a copy of the violations list with management.

Preparing the Visitation Report

1. Prepare Page 1 (Report of Visitation — Compliance) (required).
   - The financial institution must receive, either in the visitation report, report of examination, or both, a discussion of compliance with the provisions of an outstanding enforcement action.

- Use topical headings, such as those used to prepare Page 1 comments for the Compliance Report of Examination.

2. Prepare Violations Pages (if applicable).

3. Prepare Supervisory Comments (Page A,– Supervisory Section) (optional)
   - Include recommendation to the Regional Office on whether to remove or retain reporting requirements contained within outstanding formal or informal enforcement actions (if not included on Page 1).

4. Forward the Report of Visitation to the review staff designated by Regional Office management.

5. Update all appropriate SOURCE data fields, and ensure that all SOURCE submission requirements are met.

6. Regional review staff will review the Report of Visitation. At the discretion of the Regional Office management, visitation findings will be forwarded to the financial institution by either of the following:
   - Transmittal letter only; or
   - Transmittal letter and Report of Visitation.

Documenting Visitation Findings

Appropriate workpapers must be completed for applicable areas reviewed during each visitation.

References

DSC RD Memo 03-008: Information Package for De Novo Banks
http://fdic01/division/dsc/memos/memos/6000/03-008.pdf

Enforcement Actions

Introduction

The FDIC may initiate informal or formal action when an insured depository institution is found to be in an unsatisfactory condition. Informal actions represent the final supervisory step before formal enforcement proceedings are initiated. The FDIC has broad enforcement powers under the Federal Deposit Insurance (FDI) Act to issue formal enforcement actions.

This section provides a brief summary of the types of informal and formal actions that the FDIC has the authority to issue. When considering an enforcement action, the consultation policy should be followed, as well as procedures set forth in the DSC Formal and Informal Action Procedures (FIAP) Manual.

Types of Enforcement Actions

Informal actions are voluntary commitments made by the Board of Directors/trustees of a financial institution. They are designed to correct identified deficiencies and ensure compliance with federal and state banking laws and regulations. Informal actions are neither publicly disclosed nor legally enforceable.

The most common informal enforcement actions used by the FDIC are the following:

- Board Resolution: Informal commitments developed and adopted by a financial institution's Board of Directors/trustees, often at the request of an FDIC Regional Director, directing the institution's personnel to take corrective action regarding specific noted deficiencies. The FDIC is not a party to the resolution, but approves and accepts the resolution as a means to initiate corrective action.
- Memorandum of Understanding: Informal agreement between an institution and the FDIC that is drafted by the Regional Office staff to address and correct identified weaknesses in an institution's compliance or CRA posture. A Memorandum of Understanding is generally used in place of a Board resolution when the FDIC has reason to believe that a Board resolution would not adequately address the deficiencies noted during the examination.

Formal enforcement actions are those taken pursuant to the powers granted to the FDIC's Board of Directors under Section 8 of the FDI Act. Each situation and circumstance determines the most appropriate action to be taken.

Formal actions used in connection with compliance matters may include the following:

- Termination of Insurance: Section 8(a).
- Cease-and-Desist Order: Section 8(b): Issued to halt violations of law as well as to require affirmative action to correct any condition resulting from such violations. By ordering an institution or an institution affiliated party (IAP) to cease and desist from practices and/or take affirmative actions, the FDIC may prevent the problems facing the institution from reaching such serious proportions as to require more severe enforcement actions.
- Temporary Cease-and-Desist Order: Section 8(c): Issued in the most severe situations to halt particularly egregious practices pending a formal hearing on permanent Cease-and-Desist Orders issued pursuant to Section 8(b).
- Removal and Prohibition Order: Section 8(e)(1): The FDIC has the authority to order the removal of an IAP, i.e., director, officer, employee, controlling stockholder other than a bank holding company, or agent for an insured depository institution. The prohibition may be for specific activities or may be industry wide.
- Temporary Suspension Order: Section 8(e)(3): The FDIC may order the temporary suspension of an IAP pending a hearing on an Order of Removal if the individual's continued participation poses an immediate threat to the institution or to the interests of the institution's depositors.
- Suspension Order: Section 8(g): Issued to IAPs who are charged with felonies involving dishonesty or a breach of trust pending the disposition of the criminal charges.
- Civil Money Penalties: Section 8(i)(2): Assessed to sanction an institution or IAP according to the degree of culpability and severity of the violation, breach, and/or practice and also to deter future occurrences.

References

DSC RD Memo 05-045: Formal and Informal Action Procedures Manual
http://fdic01/division/dsc/memos/memos/6000/05-045.pdf
http://fdic01/division/dsc/rm/fiap_manual/index.html

Federal Deposit Insurance Act, Section 8
http://www.fdic.gov/regulations/laws/rules/1000-900.html#1000sec.8

12 CFR §308 (Rules of Procedure; multiple subparts)
http://www.fdic.gov/regulations/laws/rules/2000-1900.html#2000part308

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies
http://www.fdic.gov/regulations/laws/rules/5000-1600.html#5000interagencypr

Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies
http://www.fdic.gov/regulations/laws/rules/5000-700.html#5000interagencyno

Joint statement of Policy: Administrative Enforcement of the Truth in Lending Act – Restitution
http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

DSC RD Memo 05-029: Revised Guidance About Civil Money Penalties For Flood Insurance Violations
http://fdic01/division/dsc/memos/memos/6000/05-029.PDF

Truth in Lending (TIL) Restitution Verification

Examination Objectives

1. Determine during PEP whether the prior Report of Examination included a request for restitution pursuant to Section 108(e) of the Truth in Lending Act.
2. Become familiar with the nature of the violations and the extent of the file search necessary to identify affected loans.
3. Review the correspondence file to determine if the financial institution has reported completion of the reimbursements or if there are any unresolved issues pending, such as a formal request for relief from reimbursement.
4. Perform the following examination procedures during PEP in those instances where the number of loans subject to restitution is relatively small and requesting the institution to provide relevant documentation would not be burdensome.

   The objectives are to:

   - Determine that a complete file search was conducted.
   - Verify that reimbursement calculations and worksheets from the financial institution are accurate and conform with violations cited.
   - Verify that reimbursements were made to all entitled customers and dispersed correctly.

Verification Procedures

The following procedures are to be used when reviewing an institution's compliance with restitution requested as a result of reimbursable Truth in Lending (TIL) violations cited at the previous compliance examination.

1. Identify the person(s) responsible for making the calculations and providing reimbursement.
2. Discuss the method used to determine which loans were reimbursable.
3. Determine that an appropriate file search and any subsequent reimbursements were completed in accordance with direction received from the FDIC through the prior Compliance Report of Examination and transmittal letter sent to the financial institution.
4. Consider the following items when determining the scope of the review:
   - Number of affected loans identified;
   - Effectiveness of overall compliance program;
   - Management's willingness to correct prior violations;
   - Nature of violations; and
   - Time constraints.
5. Review reimbursement documentation for accuracy.
6. Review reimbursement documentation for the following items:
   - Reimbursement calculations;
   - Canceled reimbursement checks (When reviewing canceled checks be sure to look at the endorsement(s) on the back of the checks to ensure the checks have been endorsed by the appropriate individual(s)); and
   - Verify, through a sample of checks, the validity of the endorsement signature.
7. Compare the list of reimbursable exceptions, maintained in the prior Compliance Examination workpapers, with the file search and actual reimbursements made by the financial institution.
8. If either the file search or reimbursements were not handled correctly, immediately inform the Field Supervisor and the Regional Office.
9. The examiner must complete appropriate workpapers, in accordance with instructions, and attach them to the appropriate documentation of the financial institution's reimbursement calculations.

References

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution
http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

FIL 19-97: Requests for Relief from Reimbursement under the Truth in Lending Act
http://www.fdic.gov/news/news/financial/1997/fil9719.html

FIL 20-98: Reimbursable Violations of the Truth in Lending Act
http://www.fdic.gov/news/news/financial/1998/fil9820.html

Attachment to FIL 20-98: Interagency Questions and Answers Regarding Corrective Action Time Periods under the Truth in Lending Act Policy Guide
http://www.fdic.gov/news/news/financial/1998/fil9820a.html

Job Aids

DCA RD Memo 98-021: Procedures for Determining When a "Pattern or Practice" Exists for Certain Violations of Regulation Z (Truth in Lending Act)
http://fdic01/division/dsc/memos/memos/direct/6430-10.pdf

DCA RD Memo 98-030: Additional Guidance on "Immediately Preceding Examination" for Purposes of Truth in Lending Restitution
http://fdic01/division/dsc/memos/memos/direct/6430-11.pdf

DCA RD Memo 98-020: Calculating APRs for Periodic Statements in Accordance with Regulation Z (Truth in Lending Act)
http://fdic01/division/dsc/memos/memos/direct/6430-9.pdf

DCA RD Memo 97-030: Restitution Procedures for Regulation Z (Truth in Lending Act)
http://fdic01/division/dsc/memos/memos/direct/6430-6.pdf

Appeals

Introduction

On June 28, 2004, the FDIC Board of Directors adopted revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines), which describe the process by which financial institutions may appeal material supervisory determinations (MSDs) made by examiners and/or regional supervisory officials.

The revised Guidelines change the composition of the Supervisory Action Review Committee (SARC), reducing it from five to three voting members, and incorporate changes to the procedures governing SARC appeals. Included are new rules under which the Division of Supervision and Consumer Protection (DSC) issues written decisions if it denies requests for review of material supervisory determinations; if dissatisfied with the division's determination, institutions decide for themselves whether to appeal to the SARC; and SARC decisions will be published, with exempt material redacted. The types of determinations eligible for review by the SARC and the standards by which such appeals are decided remain unchanged.

Appeals Process

Financial institutions are asked to make a good faith effort to resolve the dispute concerning the MSD with the on-site examiner and/or the Regional Office. The on-site examiner and the Regional Office are expected to promptly respond to any concerns raised by an institution. If the institution is unable to resolve a dispute with an examiner or Regional Office, and would like to initiate an appeal, the financial institution must submit a written request for review to the Director of DSC within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination.

The DSC Director will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. An institution that does not agree with the written determination rendered by the DSC Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The DSC Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file.

If the Director determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution.

Prohibition Against Examiner Retaliation - Any retaliation, abuse, or retribution by FDIC personnel, including an examiner, against an institution that appeals a MSD constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action by the Director.

References

Guidelines for Appeals of Material Supervisory & Deposit Insurance Assessment Determinations,
http://www.fdic.gov/regulations/laws/sarc/sarcguidelines.html

DSC RD Memo 04-045: Guidelines for Processing Appeals of Material Supervisory Determinations
http://fdic01/division/dsc/memos/memos/6000/04-045.pdf

(This page intentionally left blank.)

Examination and Visitation Frequency

Institutions supervised by the FDIC are examined at intervals determined by their size and the ratings assigned during the most recent previous compliance and CRA examinations. The frequency schedule used by the FDIC incorporates changes required by the Gramm-Leach-Bliley Act of 1999 (GLBA).

The GLBA established intervals between CRA examinations at favorably-rated insured depository institutions with aggregate assets of $250 million or less. More specifically, institutions with aggregate assets of $250 million or less and a CRA rating of "Outstanding" are subject to a CRA eamination no more than once every 60 months. Institutions with aggregate assets of $250 million or less and a "Satisfactory" CRA rating are subject to a CRA examination no more than once every 48 months. This schedule also facilitates concurrent compliance and CRA examinations.

Concurrent compliance/CRA, safety and soundness, and specialty examinations should be conducted to accommodate the preferences of the bank, unless to do so would be impractical or inefficient. The preferences of an institution(s) that make up a Case (related financial institutions managed as a group) and the examination frequency requirements are important factors to consider when developing a Case examination plan.

When scheduling an examination, the objectives are to:

- Target examinations and supervisory efforts where the need is greatest
- Appropriately allocate examination resources
- Conduct concurrent examinations, when requested by the bank, if practical.

References

DCA RD Memo 00-001: Revisions to the Compliance and CRA Examination Frequency Schedule
http://fdic01/division/dsc/memos/memos/direct/6610-3.pdf

DCA RD Memo 97-013: Financial Institution Supervision
http://fdic01/division/dsc/memos/memos/direct/6000-1.pdf

DSC RD Memo 04-031: Compliance Examination Procedures in Multi-Bank Holding Company Environments
http://fdic01/division/dsc/memos/memos/6000/04-031.pdf

DSC RD Memo 05-039: Relationship Manager Program Implementation
http://fdic01/division/dsc/memos/memos/6000/05-039.pdf

Examination Frequency

Table 1 — Institutions with Total Assets of $250 Million or Less
CRA/Compliance Examination Frequency (in months)

CRA Rating	Outstanding	Satisfactory	Needs to Imporove	Substantial Noncompliance
Compliance Rating 1	60 – 72 (CRA) 30 – 36 (Compliance)	48 – 60 (CRA) 24 – 30 (Compliance)	12 – 24	12
2	60 – 72 (CRA) 30 – 36 (Compliance)	48 – 60 (CRA) 24 – 30 (Compliance)	12 – 24	12
3	60 – 72 (CRA) 12 – 24 (Compliance)	48 – 60 (CRA) 12 – 24 (Compliance)	12 – 24	12
4	60 – 72 (CRA) 12 (Compliance)	48 – 60 (CRA) 12 (Compliance)	12	12
5	60 – 72 (CRA) 12 (Compliance)	48 – 60 (CRA) 12 (Compliance)	12	12

Table 2 — Institutions with Total Assets of Greater Than $250 Million
CRA/Compliance Examination Frequency (in months)

CRA Rating	Outstanding	Satisfactory	Needs to Imporove	Substantial Noncompliance
Compliance Rating 1	24 – 36	24 – 36	12 – 24	12
2	24 – 36	24 – 36	12 – 24	12
3	12 – 24	12 – 24	12 – 24	12
4	12	12	12	12
5	12	12	12	12

Consumer Compliance Rating System

Introduction

The FDIC follows the Uniform Interagency Consumer Compliance Rating System (Rating System) approved by the Federal Financial Institutions Examination Council in 1980. The text of the Rating System is contained in this section.

In assigning ratings under this system, it is important to recognize that all the attributes in each rating category will not necessarily apply to each institution. Further, the Rating System does not automatically place an institution in a certain category. The rating categories represent institutional profiles that are used to distinguish between varying levels of supervisory concern. Consistent with the overall examination approach, examiners are expected to use reasoned judgment to reach sensible, supportable conclusions about an institution's performance based on the totality of the examination findings. The examiner should choose the category whose description best reflects the institution's overall compliance position.

The Rating System provides a general framework for evaluating and integrating significant compliance factors in order to assign a consumer compliance rating to each federally regulated commercial bank, savings and loan association, mutual savings bank and credit union. The Rating System does not consider or take into account an institution's record of lending performance under the CRA or its compliance with the applicable provisions of the implementing regulations since institutions are rated separately for CRA purposes.

The purpose of the Rating System is to reflect in a comprehensive and uniform fashion the nature and extent of an institution's compliance with consumer protection and civil rights statutes and regulations. In addition to serving as a useful tool for summarizing the compliance position of individual institutions, the Rating System will also assist the public and the Congress in assessing the aggregate compliance posture of regulated financial institutions.

Overview

Under the uniform Rating System, each financial institution is assigned a consumer compliance rating predicated upon an evaluation of the nature and extent of its present compliance with consumer protection and civil rights statutes and regulations and the adequacy of its operating systems designed to ensure compliance on a continuing basis. The Rating System is based upon a scale of 1 through 5 in increasing order of supervisory concern. Thus, "1" represents the highest rating and consequently the lowest level of supervisory concern; while "5" represents the lowest, most critically deficient level of performance and therefore the highest degree of supervisory concern. Each of the five ratings is described in greater detail below.

In assigning a consumer compliance rating all relevant factors must be evaluated and weighed. In general, these factors include the nature and extent of present compliance with consumer protection and civil rights statutes and regulations, the commitment of management to compliance and its ability and willingness to take the necessary steps to assure compliance, and the adequacy of operating systems, including internal procedures, controls, and audit activities designed to ensure compliance on a routine and consistent basis. The assignment of a compliance rating may incorporate other factors that impact significantly on the overall effectiveness of an institution's compliance efforts.

While each type of financial institution has differences in its general business powers and constraints, all are subject to the same consumer protection and civil rights statutes and regulations covered by the Rating System. Thus, there is no need to evaluate differing types of financial institutions on criteria relating to their particular industry. As a result, the assignment of a uniform consumer compliance rating will help direct uniform and consistent supervisory attention which does not depend solely upon the nature of the institution's charter or business or the identity of its primary Federal regulator. In this manner, overall uniformity and consistency of supervision will be strengthened by the existence of common consumer compliance ratings.

The primary purpose of the uniform Rating System is to help identify those institutions whose compliance with consumer protection and civil rights statutes and regulations display weaknesses requiring special supervisory attention and which are cause for more than a normal degree of supervisory concern. To accomplish this objective, the Rating System identifies an initial category of institutions that have compliance deficiencies that warrant more than normal supervisory concern. These institutions are not deemed to present a significant risk of financial or other harm to consumers, but do require a higher than normal level of supervisory attention. Institutions in this category are generally rated "3." The Rating System also identifies certain institutions whose weaknesses are so severe as to represent, in essence, a substantial or general disregard for the law. These institutions are, depending upon nature and degree of their weaknesses, rated "4" or "5."

The uniform identification of institutions giving cause for more than a normal degree of supervisory concern will help ensure:

- That the degree of supervisory attention and the type of supervisory response are based upon the severity and nature of the institution's problems;
- That supervisory attention and action are, to the extent possible, administered uniformly and consistently;

regardless of the type of institution or the identity of the regulatory agency; and

- That appropriate supervisory action is taken with respect to those institutions whose compliance problems entail the greatest potential for financial or other harm to consumers.

Consumer Compliance Ratings

Consumer Compliance Ratings are defined and distinguished as follows:

One

An institution in this category is in a strong compliance position. Management is capable of and staff is sufficient for effectuating compliance. An effective compliance program, including an efficient system of internal procedures and controls, has been established. Changes in consumer statutes and regulations are promptly reflected in the institution's policies, procedures and compliance training. The institution provides adequate training for its employees. If any violations are noted they relate to relatively minor deficiencies in forms or practices that are easily corrected. There is no evidence of discriminatory acts or practices, reimbursable violations, or practices resulting in repeat violations. Violations and deficiencies are promptly corrected by management. As a result, the institution gives no cause for supervisory concern.

Two

An institution in this category is in a generally strong compliance position. Management is capable of administering an effective compliance program. Although a system of internal operating procedures and controls has been established to ensure compliance, violations have nonetheless occurred. These violations, however, involve technical aspects of the law or result from oversight on the part of operating personnel. Modification in the bank's compliance program and/or the establishment of additional review/audit procedures may eliminate many of the violations. Compliance training is satisfactory. There is no evidence of discriminatory acts or practices, reimbursable violations, or practices resulting in repeat violations.

Three

Generally, an institution in this category is in a less than satisfactory compliance position. It is a cause for supervisory concern and requires more than normal supervision to remedy deficiencies. Violations may be numerous. In addition, previously identified practices resulting in violations may remain uncorrected. Overcharges, if present, involve a few consumers and are minimal in amount. There is no evidence of discriminatory acts or practices. Although management may have the ability to effectuate compliance, increased efforts are necessary. The numerous violations discovered are an indication that management has not devoted sufficient time and attention to consumer compliance. Operating procedures and controls have not proven effective and require strengthening. This may be accomplished by, among other things, designating a compliance officer and developing and implementing a comprehensive and effective compliance program. By identifying an institution with marginal compliance early, additional supervisory measures may be employed to eliminate violations and prevent further deterioration in the institution's less-than-satisfactory compliance position.

Four

An institution in this category requires close supervisory attention and monitoring to promptly correct the serious compliance problems disclosed. Numerous violations are present. Overcharges, if any, affect a significant number of consumers and involve a substantial amount of money. Often practices resulting in violations and cited at previous examinations remain uncorrected. Discriminatory acts or practices may be in evidence. Clearly, management has not exerted sufficient effort to ensure compliance. Its attitude may indicate a lack of interest in administering an effective compliance program which may have contributed to the seriousness of the institution's compliance problems. Internal procedures and controls have not proven effective and are seriously deficient. Prompt action on the part of the supervisory agency may enable the institution to correct its deficiencies and improve its compliance position.

Five

An institution in this category is in need of the strongest supervisory attention and monitoring. It is substantially in noncompliance with the consumer statutes and regulations. Management has demonstrated its unwillingness or inability to operate within the scope of consumer statutes and regulations. Previous efforts on the part of the regulatory authority to obtain voluntary compliance have been unproductive. Discrimination, substantial overcharges, or practices resulting in serious repeat violations are present.

III. Compliance Examination Templates

Contents

Risk Profile and Scope Memorandum	III–1.1
Interview Sheet	III-2.1
Compliance Information and Disclosure Request	III-3.1

(This page intentionally left blank.)

RISK PROFILE AND SCOPE MEMORANDUM

COMPLIANCE EXAMINATION

Pre-Examination Planning Memorandum Data Sheet

Name of Institution:.....
City, State:.....
Cert. No.....
# of Open Offices (including Main Office).....
SHARP Examination No.....
Total Assets (xx/xx/xxxx).....
Field Office of Institution.....
Field Office Performing Examination.....
Examiner-In-Charge (Current Examination).....

LAST EXAMINATION INFORMATION

Type	PROC	Date	Rating	# Examiners	Hours	EIC

OUTSTANDING ENFORCEMENT ACTION INFORMATION

EA Type	Division	Issue Date	Supervisory Area

CURRENT EXAMINATION INFORMATION

PEP Start Date.....
PEP Completion Date.....
Anticipated Examination Date.....
Assigned Number of Examiners.....
Anticipated Compliance Hours.....
Anticipated CRA Hours.....
Proposed Number of Community Contacts to be Performed..
Consumer Complaints received since the previous
Examination?.....
Has data requested from the Institution been received?.
Is HMDA Applicable?.....

Current SAER Exam Comment:

REPORT OF CONDITION AND INCOME

Date.....
Net Loans.....
Gross Loans.....

BREAK-DOWN OF LOAN PORTFOLIO

Loan Type	Dollar Volume	% of Portfolio
Consumer Loans		

Commercial Loans
Farm Loans
Multi-Family Loans
Residential Loans
Other

ASSET GROWTH

Call Date:
Total Assets:

Call Date:
Total Assets:

DEPOSIT INFORMATION

Non-Interest **Interest Bearing**

SUMMARY OF THE RISK PROFILE OF THE INSTITUTION

Risk Profile Matrix

Bank Name City, State	CMS Elements Oversight	Program	Audit
Operational Areas:			
Lending			
Deposits			
Insurance Sales			
Investment Sales			
(Other)			
Other Issues:			
(_____)			
(_____)			

(L) = Low Risk; (M) = Moderate Risk; (H) = High Risk

CMS Elements:

Oversight

Program

Audit

Operational Areas:

Lending

Deposits

Insurance Sales

Investment Sales

Other Products or Issues

SCOPE OF THE EXAMINATION

Compliance Management System

Community Reinvestment Act (CRA)

Fair Lending Review

Complaints

Miscellaneous

ISSUES TO BE INVESTIGATED OR AREAS TO BE TARGETED

All issues of special concern discussed under the two previous sections will be targeted. In addition, the following table indicates the specific regulations that will and will not be subject to **t**ransactional **t**esting or **s**pot-**c**hecking.

AREA	Testing (No/TT/SC) LX	CX	Comments
LENDING			
Truth In Lending			
Equal Credit Opportunity Act			
Fair Housing Act			
Home Mortgage Disclosure Act			
Flood Insurance			
Real Estate Settlement Procedures Act			
Homeownership Counseling			
Homeowners Protection Act			
Preservation of Consumer Claims and Defenses			
Credit Practices Rule			
Fair Debt Collection Practices Act			
Consumer Leasing			

DEPOSITS			
Truth In Savings			
Electronic Funds Transfer			
Expedited Funds Availability, including Check 21			
Interest on Deposits			

OTHER PRODUCTS			
Retail Insurance/ Annuities Sales			
Retail Investment Sales			
Government Securities			

PRIVACY/CONSUMER INFORMATION/GENERAL REQUIREMENTS			
Right to Financial Privacy Act			
Privacy of Consumer Financial Info			
Fair Credit Reporting			
Children's On-line Privacy Protection			
CAN SPAM			
Telephone Consumer Protection			
Electronic Banking, including E-Sign			
Advertising of Membership			
Unfair or Deceptive Acts or Practices			

COMMUNITY REINVESTMENT ACT			
CRA Technical Requirements			
Branch Closings			
Interstate Banking and Branching			

(This page intentionally left blank.)

Interview Sheet

INTERVIEW SHEET

BACKGROUND

This document is a guide for an examiner's initial discussion with a bank. It is designed to gather current information for tailoring the CIDR to request only those items necessary to conduct the examination. The interview sheet may also help with scoping the examination and with on-site logistics (e.g., setting up the phone line, ensuring that appropriate bank personnel will be available, etc.). The interview sheet should be used in conjunction with the Risk Profile and Scope Memorandum (RPSM) for both the current and last examinations. Before using it to plan and conduct a discussion with the bank an examiner should pull the RPSM from SOURCE for the current examination, and review the final RPSM for the last examination. The examiner should also locate documents available from within the FDIC and from public sources, in order to avoid unnecessary requests to the bank. Such documents may also raise questions to discuss with the bank.

This is a work paper; it is not necessary to type the banker's responses. There may be questions that are not relevant, depending on the bank being examined. Additions or changes may also be appropriate to address field or regional office requirements. The work paper should be adjusted as appropriate before holding a discussion with the banker.

Some of the items included on this interview sheet may be more appropriately included in the Compliance Information and Document Request (CIDR). For instance, an examiner may wish to have the bank respond in writing to a certain area. Such items should simply be moved from this list to the CIDR. There may also be items in the CIDR that an examiner wishes to discuss with the bank during the interview, and that is appropriate also.

The next pages are designed to help plan the examination and the interview.

Bank Name:	Street Address:
Bank Phone Number:	Mailing Address:
Bank President:	Bank Website:
Bank Compliance Officer:	Bank CRA Officer:

Cert. #	SHARP #

Type of exam:	❑ FULL EXAM ❑ FULL EXAM – NEW BANK ❑ FULL EXAM – CHARTER FLIP	❑ COE ❑ COE – NEW BANK ❑ COE – CHARTER FLIP	❑ New Bank Investigation ❑ New Bank Visit ❑ Charter Flip Visit ❑ Problem Bank Visit ❑ Other

Telephone Ordered: / /	Order Number:
Install date: / /	Complete date: / /

Call Report Run?	Y	N

Examination Request Letter Mailed
or Sent via FDICconnect: / /
(circle transmission method)

Electronic Download Request	Y	N
CIDR	Y	N
CIDR diskette	Y	N
Return Mailing Label(s)	Y	N

Bank has document imaging? Y N

If yes, survey on e-exam website
completed: / /
By:

[http://fdic01/division/dsc/ebanking/
exampilot/index.html]

FDIC Relationship Manager:

PRIOR EXAM DATE:	*Reviewed at last exam*		*VIOLATIONS* at last exam		*COMMENTS*
	YES	NO	*Significant*	*Isolated & Technical*	
Truth In Lending-(Federal Reserve Board's Regulation Z)					
Equal Credit Opportunity (Federal Reserve Board Regulation B)					
Fair Housing Act (Part 338 of FDIC Rules & Regs)					
Home Mortgage Disclosure Act (Federal Reserve Board Regulation C)					
Flood Insurance (Part 339 of FDIC Rules & Regs)					
Real Estate Settlement Procedures (Department of Housing and Urban Development's Reg X)					
Home Ownership Counseling					
Homeowners Protection Act					
Preservation of Consumer's Claims and Defenses					
Credit Practices Rule (Federal Reserve Board's Regulation AA)					
Fair Debt Collection Practices Act					
Consumer Leasing (Federal Reserve Board's Regulation M)					
Truth in Savings (Federal Reserve Board's Regulation DD)					
Electronic Funds Transfer (Federal Reserve Board Regulation E)					
Expedited Funds Availability (Federal Reserve Board Regulation CC)					
Check 21					
Interest On Deposits-Req Q (Part 329 of FDIC Rules & Regs)					

Consumer Protection in Sales of INSURANCE (Part 343 of FDIC Rules & Regs)					
Consumer Protection in Sales of INVESTMENTS (Part 344 of FDIC Rules & Regs)					
Government Securities (Treasury Regulations Parts 403.5(d) and 450)					
Right to Financial Privacy					
Privacy of Consumer Financial Information (Part 332 of FDIC Rules & Regs)					
Fair Credit Reporting Act					
Electronic Banking					
E-Sign Act					
Children's Online Privacy Protection Rule					
CAN SPAM					
Telephone Consumer Protection Act					
Advertisement of Membership (Part 328 of FDIC Rules & Regs)					
Unfair or Deceptive Acts or Practices (FTC Act Section 5)					
Community Reinvestment Act (Part 345 of FDIC Rules & Regs))					
Section 109 – Interstate Banking and Branching Efficiency Act of 1994 (IBBEA)					
Branch Closing Policy (Sec. 42)					

INTERVIEW

Introduction/principal purpose of call: • gather information so that the pre-examination request for written information and documents is tailored to the bank's operations, and • help scope the examination.	
FDIC interviewer:	Interview Phone Call Date: / /
Bank Personnel Interviewed:	

EXAMINATION PLANNING

Discuss the time frame for the Compliance and CRA examination.

Discuss the examination focus – the *compliance management system*.

Discuss director participation in examination meetings/communication with examiners.

Discuss the entry letter and attached documents - the CIDR.

Request will indicate which items to "Send" or "Hold" – inform management that it is an option to send some of the CIDR information to the office.

Caution bank against copying large documents such as Board Minutes. However, if documents are available electronically, could provide on diskette.

Discuss with the bank whether it would be helpful to exchange documents electronically through FDICconnect.

Caution bank against creating something that does not exist (for example, "do not draft a resume').

Caution against providing original documents, but if they do, to indicate such on the material.

[If bank does not offer particular product, just mark N/A on the returned CIDR hardcopy.]

Discuss the automated loan data download (requested in letter). [If request is to be made of bank, omit overlapping requests under Truth in Lending in the CIDR].

Discuss any vacations or known absences that may impact the timing of the examination (examiner or banker).

Verify the names of senior management and the mailing address for the PEP package.

Discuss installing an FDIC telephone line, and request the name of the bank's contact person to coordinate with the telephone company.

Ask whether the bank purchased another institution or branch since the previous examination.

CIDR CUSTOMIZATION

When the bank's answer to a question below is "No" the examiner should eliminate or adjust the corresponding request in the CIDR.

PART I: COMPLIANCE MANAGEMENT SYSTEM

BOARD OF DIRECTORS AND SENIOR MANAGEMENT OVERSIGHT		
	YES	**NO**
Has there been any change in control of the bank?		
Has there been any change in Directors?		
Has there been any change in Senior Officers?		
Does the Board have an audit committee?		
Any compliance-related Board or management committee?		
A credit committee?		
A pricing committee?		
Does the bank have a mission statement?		
Business plan?		
Strategic plan?		
COMPLIANCE PROGRAM		
	YES	**NO**
Has there been any change in bank personnel (e.g., compliance officer, assisting personnel) performing compliance functions since the previous examination?		

Has the bank consulted an attorney (internal or external counsel) on any compliance matters since the previous examination?		
Does the bank use a consultant or consulting company to manage its compliance program? [coordinate question with one below on third party service providers]		
TRAINING		
	YES	**NO**
Does the bank conduct testing of the staff's compliance knowledge subsequent to training, and maintain the results of such testing?		
INTERNAL MONITORING		
	YES	**NO**
Has the bank conducted compliance self assessments/reviews (for example, loan quality control reviews and branch reviews) since the previous examination?		
If yes, are records of the results available?		
CONSUMER COMPLAINT RESPONSE		
	YES	**NO**
Has the bank received any written consumer complaints since the last examination?		
Has the bank been party to any consumer-related litigation since the previous examination?		
Has the bank been involved in any investigations by other agencies (DOJ, HUD, EEOC, or state or local authorities) since the previous examination?		
PERIODIC INDEPENDENT TESTING AND AUDITS (INTERNAL/EXTERNAL)		
	YES	**NO**
Has the bank or an external party conducted a compliance audit since the previous examination?		

THIRD-PARTY SERVICE PROVIDERS		
	YES	**NO**
Does the bank use any third party or affiliated vendors to provide any of the following compliance related services?		
Compliance auditing		
training		
compliance consulting		
flood determinations		
disclosure forms		
escrow account administration		
other _____		
INFORMATION SYSTEMS SUPPORT FOR COMPLIANCE		
	YES	**NO**
Does the bank make use of any loan or deposit platform computer applications?		
If yes, are they new since the previous examination?		
Loan platform name:		
Deposit platform name:		
Has there been any change in the bank's data processing servicer or in the data processing system (conversions, upgrades, etc.) since the previous examination?		
Does the bank currently have loan document imaging capabilities? If no, does the bank have any plans for implementing document imaging in the future?		
RECORDKEEPING		
	YES	**NO**

Does the bank develop its own forms internally?		
PART II: LENDING COMPLIANCE		
	YES	**NO**
Has the bank introduced any new loan products since the previous examination?		
Has the bank purchased any loan portfolios since the previous examination?		
TRUTH IN LENDING		
	YES	**NO**
Does the bank offer any of the following open-end consumer credit products?		
Overdraft protection		
personal lines of credit		
home equity lines of credit		
credit cards		
other _____		
Does the bank offer any adjustable rate mortgages?		
Has the bank made any Regulation Z reimbursements since the previous compliance examination?		
EQUAL CREDIT OPPORTUNITY		
	YES	**NO**
Does the bank extend credit to customers on the request of dealers or merchants?		
Does the bank use a credit scoring system?		
Does the bank use any risk-based pricing?		

FLOOD INSURANCE		
	YES	**NO**
Does the bank use a third party for flood hazard determinations?		
Has the bank made any loans secured by improved real property or a mobile home located in a special flood hazard area?		
REAL ESTATE SETTLEMENT PROCEDURES		
	YES	**NO**
Does the bank make use of escrow accounts for its mortgage loans?		
Is the bank involved in an affiliated business arrangement as defined in RESPA?		
HOME OWNERSHIP COUNSELING		
	YES	**NO**
Does the bank provide a written notice to homeowners who are delinquent on their home loans?		
If yes, does the notice contain information about available homeownership counseling?		
HOMEOWNERS PROTECTION ACT		
	YES	**NO**
Has the bank originated residential loans with private mortgage insurance (PMI), either in-house or for sale or referral into the secondary market, since the previous examination?		
PRESERVATION OF CONSUMER'S CLAIMS AND DEFENSES		
	YES	**NO**
Does the bank purchase any dealer paper (purchase money loans made by dealers)?		
FAIR DEBT COLLECTION PRACTICES		
	YES	**NO**
Does the bank perform collection services for any defaulted consumer		

debts owed to third parties?		
CONSUMER LEASING		
	YES	**NO**
Has the bank financed any consumer leases since the previous examination?		
PART III: DEPOSIT COMPLIANCE		
	YES	**NO**
Has the bank introduced any new deposit products since the previous examination?		
TRUTH IN SAVINGS		
	YES	**NO**
Has the bank offered merchandise as a bonus or premium for certain deposits?		
Does the bank use the collected balance or the ledger balance method to accrue interest?		
INTEREST ON DEPOSITS		
	YES	**NO**
Does the bank pay finders or broker fees on deposits?		
ELECTRONIC FUND TRANSFERS (EFT)		
	YES	**NO**
Has the bank implemented any new EFT services (including electronic check conversion) since the previous examination?		
EXPEDITED FUNDS AVAILABILITY		
	YES	**NO**
Does the bank place holds on deposited items either on a case-by-case or on an exception basis?		

PART IV: INSURANCE AND INVESTMENTS		
INSURANCE		
	YES	**NO**
Does the bank, or any other person at an office of the bank or on behalf of the bank, offer insurance (including credit life) or annuities to consumers?		
INVESTMENTS		
	YES	**NO**
Does the bank directly or through an arrangement with a third party offer investment products (including variable annuities) to retail customers (including cash management sweep accounts and repurchase agreement transactions)?		
Does the bank offer to retail customers repurchase agreements involving U.S. Government or Agency securities held in a custodial capacity to retail customers?		
Is the bank a government securities broker or dealer?		
If no, does the bank hold government securities (itself or through a third party custodian bank) as a fiduciary, custodian or other capacity for retail customers?		

PART V: PRIVACY AND CONSUMER INFORMATION		
RIGHT TO FINANCIAL PRIVACY		
	YES	**NO**
Has the bank provided any Federal government authority access to the financial records of any consumer (or partnership of 5 or fewer individuals) since the previous examination?		
PRIVACY OF CONSUMER FINANCIAL INFORMATION		
	YES	**NO**
Does the bank disclose nonpublic personal information about consumers to nonaffiliated third parties to market the bank's own products or services, or to market financial products or services offered pursuant to joint marketing agreements between the bank and another financial institution?		

Does the bank disclose nonpublic personal information to nonaffiliated third parties outside of the exceptions for normal business purposes and joint marketing agreements? (e.g. is an opt-out choice provided to consumers for non-affiliated third party sharing?)		
Does the bank receive nonpublic personal information about consumers from nonaffiliated financial institutions?		
Does the bank disclose, directly or through affiliates, account numbers or similar access numbers or codes for consumers' credit card accounts, deposit accounts, or transaction accounts with nonaffiliated third parties (other than a consumer reporting agency) for use in marketing?		
FAIR CREDIT REPORTING ACT (FCRA)		
	YES	**NO**
Does the bank obtain consumer reports for any purpose?		
Does the bank disclose consumer report information to any of its affiliates?		
Does the bank provide an opt-out choice to consumers for the sharing of consumer report information with its affiliates?		
Has the bank used medical information about a consumer in connection with any determination of the consumer's eligibility, or continued eligibility for credit?		
Does the bank obtain consumer reports on prospective or current employees?		

Has the bank obtained and used prescreened consumer reports to offer pre-approved credit or insurance products?		
Do electronic receipts issued by the bank for debit and credit card transactions contain no more than the last 5 digits of the account or card number?		
Does the bank use credit scores when making or arranging mortgage loans?		
Does the bank use credit scores to set terms and conditions of any type of loans? (e.g. rates, fees, or length of repayment term, etc.)		
Does the bank provide information to consumer reporting agencies?		
CHILDREN'S ONLINE PRIVACY PROTECTION		
	YES	**NO**
Does the bank operate an Internet Web site or online service that collects or could collect or maintain personal information from children online?		
CAN-SPAM		
	YES	**NO**
Does the bank initiate, either directly or through a third party, e-mail messages whose primary purpose is commercial?		

If yes, has bank management considered the applicability of CAN-SPAM and taken steps to ensure compliance?		
TELEPHONE CONSUMER PROTECTION ACT		
	YES	**NO**
Does the bank, or a third party on its behalf, engage in any form of telephone solicitation, including through fax machines?		
If yes, has bank management considered the application of TCPA and taken steps to ensure compliance?		

PART VI: ELECTRONIC BANKING		
	YES	**NO**
Does the bank offer any form of electronic banking?		
Internet banking		
PC banking		
Telephone banking		
Automated loan machines		
Does the bank accept customer inquiries/complaints via electronic mail?		

E-SIGN Act		
	YES	NO
Does the bank allow customers to receive any required account disclosures only in an electronic format?		

PART VII: COMMUNITY REINVESTMENT ACT		
	YES	NO
Has there been any change in the bank's assessment area since the previous CRA evaluation?		
Has the bank opened or closed any branches since the previous examination?		
Does the bank have any CRA Qualified Investments and Services it wants reviewed during the evaluation? (Small Bank Only)		
SECTION 109 – INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994 (IBBEA)		
	YES	NO
Has the bank opened any new branches outside of its home state since the previous examination?		
Has the bank or any of its branches been controlled by an out-of-state bank holding company for one year or more since the previous examination?		

CIDR EXAMINER EDITING INSTRUCTIONS

The CIDR template contains more than 200 specific requests for information and documents. It must be customized for each bank so that it includes only those items the EIC considers necessary to perform a risk-based, top-down examination, and does not request information or documents that the examiner could obtain from sources other than bank management (e.g. information available through the FDIC Intranet, Internet, prior exam workpapers, etc.). The bank must be consulted prior to completing the CIDR to help narrow the request. In addition to deleting unnecessary requests, be aware that there is some overlap between the information requests in the Interview Sheet and the CIDR. Be sure to delete duplicative CIDR requests unless there is a specific reason to repeat them.

Customizing the CIDR Template

1. The CIDR template is a WORD document that can be downloaded from GENESYS. Requests for information are presented first under each topic, followed by document requests in tables. Use these steps to create the request for a particular bank:

2. Save the CIDR to a new file:
   - Left click on File
   - Left click on Save As
   - Select a folder and assign a unique name to the document.

3. Insert the correct identifying information on the instruction page. If you are corresponding with the bank via FDICconnect, modify the instructions as appropriate.

4. Remove unnecessary requests:
   - Highlight requests for information and then delete.
   - For document requests, right-click in the cell with the unnecessary request item, select ***delete cells***, then select ***delete entire row.***

5. Add requests for information or documentation:
   - Insert requests for information by typing them at the beginning of the item you wish them to precede, then hit enter. The CIDR should re-number.
   - For document requests, right-click in the cell above which you want the new request to appear
   - Select ***insert row***; the row will appear above the current cell
   - Manually input the desired question or request.

6. Change, add, or delete the text of a request:
   - Edit requests for information as you would any WORD document.
   - For document requests, left click within the desired cell and edit as desired.

7. For each document request, indicate whether management should **Send** the documents to the field office, or **Hold** the documents at the bank for on-site review,

by placing an X in the appropriate box. The CIDR indicates that all requested information should be sent to the field office. If you wish information to be held at the bank, simply add a note to that effect in the request itself.

INSTRUCTIONS FOR COMPLETING THE COMPLIANCE INFORMATION AND DOCUMENT REQUEST (CIDR)

We hope the following instructions will help reduce the burden of compiling and forwarding the information and documents requested in the CIDR:

1. The CIDR is also in electronic form on the diskette provided with this request.

2. The CIDR requests information and documents in a series of categories. If you open the CIDR document on your computer, you can type most of your responses to the information requests into the document itself. Hit "enter" twice after the request and then begin typing. The document will expand as you type which allows you to type as many lines as you need. **Please type all your responses in "Bold" type.**

3. If information is not applicable to your bank, simply type **"NA."**

4. In some cases it will be more convenient to attach a document instead of typing the information. For those instances, please label the document with the number of the request, and indicate in your response that a document is attached.

5. Please send only copies of requested documents; do not send originals.

6. Once you have completed the CIDR, print it, enclose all requested documents and then mail them to the **[insert geographic name]** Field Office using the self-addressed label provided with this information request. **Please include the completed CIDR on diskette and a printed hard copy of the document in the information package**. Compliance Examiner **[insert EIC or other appropriate name]** will contact you prior to the start of the examination for final coordination. In the interim, however, please feel free to contact **[insert EIC or other appropriate name and phone number]** if you have any questions or concerns about the information and document requested.

COMPLIANCE INFORMATION AND DOCUMENT REQUEST ver 2006

Part I: COMPLIANCE MANAGEMENT SYSTEM

Board of Directors and Senior Management Oversight

Please provide the following information:

1. Name, title and phone number of the officer who is the principal contact for specific information about the bank's compliance management system.
2. A current list of your bank's directors/trustees and officers, identified by name and title. Note anyone who is new to the Board since the last examination.

Please send or hold the following documents, as indicated:

Send	Hold	
		3. Minutes of board of directors' meetings held during the review period, including those addressing your compliance management system, fair lending, and other compliance matters. Include materials or exhibits referred to in the minutes.
		4. Minutes of the board's audit committee and any compliance-related Board or management committees operating at the bank (including a list of committee members). Include materials or exhibits referred to in the minutes.
		5. Minutes of the credit committee and the pricing committee, along with materials or exhibits referred to in the minutes and supporting documentation.
		6. Mission statement, business plan (one year and long term), and any strategic plan.

Compliance Program

Please provide the following information:

7. Name and location of individual(s) who can provide access to any written compliance program, procedures, or manuals.

8. The identity of internal and/or outside counsel for compliance matters.

9. A description of the compliance issues considered by counsel during the review period.

10. A description of the assigned responsibilities for coordinating compliance in each of the bank's operating areas (functional, geographic, etc.).

11. A list of the bank's compliance resources and reference material, such as subscriptions to a monthly compliance newsletter or to a compliance service website.

12. A description of your bank's review processes that ensure that policies and procedures reflect current regulatory and legal requirements. Indicate any reviews performed or changes made to policies and procedures during the review period.

13. A description of your procedures for collecting and disseminating compliance-related information and any amendments to or new compliance procedures.

Please send or hold the following documents, as indicated:

Send	Hold	
		14. All compliance or compliance-related policies and procedures updated during the review period. If incorporated into general operational and administrative procedures, an index or outline of compliance topics covered would be helpful. Include any alternative or supplementary guidance (i.e. desk procedures or systems support) for compliance.
		15. Position descriptions and résumés for the compliance officer (s).
		16. Position descriptions and résumés of other persons with compliance responsibilities (including those in subsidiaries or divisions performing compliance services or originating business for the bank).
		17. Any correspondence from outside counsel relating to compliance matters.

Training

Please provide the following information:

18. The identity of those responsible for compliance-related staff training and a description of your compliance training program.

19. A description of training or other compliance-related professional development attended by management and staff with compliance responsibilities.

20. A description of any compliance training provided to the board of directors.

Please send or hold the following documents, as indicated:

Send	Hold	
		21. Training manuals and other training information related to compliance laws and regulations.
		22. Staff training records, including dates and participants, and topics covered.
		23. The results of any testing for: • Compliance training for new staff • Training for existing staff in new compliance initiatives or requirements • Periodic retraining of existing staff

Internal Monitoring

Please send or hold the following documents, as indicated:

Send	Hold	
		24. Reports of compliance self-assessments, with supporting documentation, performed during the review period.
		25. Reports of loan quality control reviews, whether performed by bank personnel or by a third party.
		26. Checklists for loan quality control reviews.
		27. A loan quality control review frequency schedule.
		28. Reports of branch reviews or certifications relating to compliance regulations.

Consumer Complaint Response

Please provide the following information:

29. A description of all consumer-related litigation, pending litigation, or claims, judgments, and assessments in which the bank is or is likely to become involved; provide access to related records.

30. A description of any such litigation resolved during the review period and the outcome; provide access to related records.

31. A description of any investigations by other agencies (Dept of Justice, Dept of Housing and Urban Development, Equal Employment Opportunity Commission, or state or local authorities) in which the bank has been involved during the review period and the outcome; provide access to related records.

Please send or hold the following documents, as indicated:

Send	Hold	
		32. All complaints received by the bank (or by third-party service providers) regarding loan originations, loan servicing, deposit services, or other products or services, including any complaints alleging discrimination, together with the bank's responses.
		33. Reports of any management reviews of the type, frequency, and distribution of consumer complaints.

Periodic Independent Testing and Audits (Internal/External)

Please send or hold the following documents, as indicated:

Send	Hold	
		34. Internal and external audit procedures, work programs, and risk assessment plans.
		35. Your most recent compliance audit (not your bank's last FDIC examination). Please arrange examiner access to audit workpapers.
		36. Audit schedules for the exam review period and the coming year.
		37. Follow-up reports on audit exceptions and corrective actions and management responses to the findings.

Third-party Service Providers

Please provide the following information:

38. A description of compliance assistance, consulting, or training provided by consultants or third parties. Please make arrangements for access to supporting documentation of work performed by third parties.

39. A list of third-party or affiliated vendors or service bureaus providing compliance reviews, loan quality reviews or other compliance-related services, such as tax service, flood determinations, disclosure forms, and escrow account administration.

40. A description of the oversight and review mechanisms used to determine whether third-party performance meets expectations.

Please send or hold the following documents, as indicated:

Send	Hold	
		41. Contracts and agreements (including guarantees where applicable) with third parties for compliance reviews and other compliance-related services, including internal audits and loan quality control reviews and copies of reports of the reviews.
		42. Records of due-diligence performed prior to retaining these third parties, and reports of performance reviews.

Information Systems Support for Compliance

Please provide the following information:

43. A description of any information system changes or conversions implemented or initiated during the review period and steps taken to ensure compliance.

44. A description of any project plans related to system changes or implementation.

45. A description of the oversight and review mechanisms used to determine whether third-party performance meets expectations and reports of any such reviews performed along with supporting documentation.

Please send or hold the following documents, as indicated:

Send	Hold	
		46. Records of testing of information systems handling compliance and related matters.
		47. Records of due-diligence performed prior to retaining third party information systems vendors, and reports of performance reviews.

Recordkeeping

Please provide the following information:

48. A description of forms control processes and mechanisms to disseminate new or revised forms.

Please send or hold the following documents, as indicated:

Send	Hold	
		49. Record retention schedule and record retrieval procedures

Product Development and Planning

Please provide the following information:

50. A description of any pre-implementation planning procedures.

51. Procedures for ensuring that compliance issues are addressed in acquisitions (whether of another institution or a branch, product, or loan portfolio).

52. The name and title of the officers and/or bank personnel who are appropriate contacts for specific information about the bank's marketing program.

Please send or hold the following documents, as indicated:

Send	Hold	
		53. Records of review of new products or services for compliance, including records of any reviews by counsel.
		54a. Records of pre-implementation testing of new products or services.
		54b. Records of post-implementation testing of new products or services.
		55. Marketing-related material, including: • A copy of the bank's marketing and advertising budget. • A copy of your bank's written marketing and advertising policy, if applicable. • Access to the bank's advertising file, including: o Newspaper advertisements o Radio or TV scripts o Lobby brochures o Statement stuffers o Internet advertisements o Other forms of advertising

Part II: LENDING COMPLIANCE

Please provide the following information:

56. The names, titles and phone numbers of the officers and/or bank personnel who are appropriate contacts for specific information about the following products and related compliance matters. Please advise these individuals that Examiners may be contacting them before or during the examination, seeking general information regarding bank processes.

    1. Consumer Real Estate Loans:

    2. Home Equity Loans:

    3. Consumer Construction Loans:

    4. Consumer Installment Loans:

    5. Credit Cards:

    6. Overdraft Protection:

    7. Commercial Loans:

    8. Dealer Loans:

    9. Government Guaranteed Loan Programs:

    10. Special Loan Programs (e.g., student loans, employee loans):

57. Name and location of the individual(s) who can provide access to the daily statement of assets and liabilities; and trial balances relating to all consumer loan categories (i.e. installment, home equity, single payment, residential mortgage, etc.), leases and deposits:

58. A description of any loan products that have been introduced since the last compliance examination.

Truth in Lending

Please provide the following information:

59. A list of the open-end credit plan(s) offered by the bank (including overdraft protection, personal and home equity lines of credit, credit cards, etc.).

Please send or hold the following documents, as indicated:

Send	Hold	
		60. Documentation on any Regulation Z reimbursement made pursuant to the Truth in Lending Act since the last compliance examination.
		61. The Consumer Handbook on Adjustable Rate Mortgages used for variable-rate loans.
		62. A list of all indices used by the bank for adjustable rate loan products since the last compliance examination.
		63. Copies of actual periodic billing statements for all open-end credit products sent to a customer where a finance charge was imposed for two consecutive billing periods (copy both sides of the statements).
		64. If the billing error notice is not included with the periodic billing statement, a copy of the annual billing error notice sent to open-end credit customers.
		65. Any bank policies regarding the sale of credit insurance.

Equal Credit Opportunity

Please provide the following information:

66. A description of any risk-based pricing and support for pricing tiers and costs.

67. A description of the procedures or provide a copy of the procedures currently followed when the bank takes adverse action on a verbal or written credit application submitted by:
    a. Consumers
    b. Businesses with gross revenues of $1 million or less
    c. Businesses with gross revenues of more than $1 million.

68. A description of the bank's procedures for maintaining credit information on married customers.

69. A description of the circumstances, if any, under which the bank requires a husband or wife to guarantee or co-sign a loan to his or her spouse.

70. A description of the procedures used to evidence whether loan applicants intend to be joint applicants.

71. A description of the notification given to an applicant by the bank or a dealer/ merchant in situations where the dealer or merchant requests credit from the bank for a customer and adverse action is taken on the application.

72. A description of the procedures followed by the bank to provide an applicant with a copy of an appraisal report used in connection with an application for credit to be secured by a lien on a dwelling.

73. Name and location of individual(s) who can provide access to documentation concerning loan denials and withdrawals for <u>all</u> consumer and business loan applicants during the last 25 months and 12 months, respectively.

Please send or hold the following documents, as indicated:

Send	Hold	
		74. The bank's loan and appraisal policies, and any separate underwriting guidelines.
		75. All credit application forms used by the bank or dealers.
		76. Any instructions regarding credit scoring systems utilized by the bank, as well as an explanation of how the systems were formulated.
		77. All loan guaranty forms.
		78. Loan worksheets, prequalification sheets or similar forms.
		79. All other documents that the bank may use to request or record any personal information concerning loan applicants.

		80. Adverse action notice forms (both consumer and business) used during the previous 25 months.
		81. The form used to notify applicants of the right to receive a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling.

Fair Housing – Technical

Please send or hold the following documents as indicated:

Send	Hold	
		82. Any property appraisal forms used by the bank or outside appraisers.
		83. Expense reports reflecting the cost of obtaining an appraisal from each outside appraisal firm used by the bank.

Home Mortgage Disclosure

Please provide the following information:

84. Name and location of the individual who can provide access to any set of census tract maps used by the bank and any source that the bank may use to convert a street address to a census tract.

Please send or hold the following documents as indicated:

Send	Hold	
		85. Electronic downloads of your bank's HMDA Loan Application Registers for all years since [SPECIFY YEAR], including your current year-to-date Loan Application Register. If your [SPECIFY YEAR, OR "current year-to-date] register is not yet in electronic format, a hardcopy report will be sufficient. If your bank uses the FFIEC's HMDA Data Collection Software, these files can be created by using the *"Export For Other Purpose"* function under the export option in the software. The "*Export For Other Purpose*" option will create a submission for internal use only.
		86. Documentation relating to any revisions made to the last three HMDA LARs after their initial filing with the Federal Reserve Board.

Flood Insurance

Please provide the following information:

87. A description of the procedures used to determine whether improved real estate or a mobile home securing a loan is located in a special flood hazard area and the name of the individual responsible for compliance.

88. A description of the procedures to ensure that borrowers receive timely notice of special flood hazards, the requirement for flood insurance, and the availability of federal disaster relief assistance.

89. A description of the procedures to ensure that required flood insurance coverage is obtained and maintained on a loan secured by improved real property or a mobile home in a special flood hazard area.

90. If a third party is used to determine flood hazard compliance:
    a. The name and address of the service providing flood determination.
    b. The initial fee for third party flood determination services.
    c. The portion of this fee, if any, which is for life of loan coverage, versus initial determination.

91. A list of all loans located in Special Flood Hazard Areas.

Real Estate Settlement Procedures

Please provide the following information:

92. If, in connection with granting residential mortgage credit, the bank charges a fee for making an application, checking credit history, appraising or inspecting collateral, or for any other type of real estate settlement service, including making a loan commitment, then provide details.

93. If the bank required the use of a particular settlement service provider (attorney, law firm, title company, real estate broker, real estate appraiser, or others) and required the borrower to pay any portion of the cost of such service, then list:
    a. Provider(s) names
    b. Types of services rendered
    c. Amount of customary charges imposed.

94. If the bank gave or accepted any fee, payment, advance, loan, service, discount, rebate or other consideration to or from any settlement service provider with whom the bank does business in connection with real estate mortgage lending, then provide details.

95. If the bank is involved in an affiliated business arrangement as defined in Section 3(7) of the Real Estate Settlement Procedures Act, then provide details.

96. If the bank maintains escrow accounts for federally related mortgage loans as defined in Section 3500.2 of the Real Estate Settlement Procedures, then describe the specific items included in the bank's escrow.

Please send or hold the following documents as indicated:

Send	Hold	
		97. The disclosure pertaining to the assignment, sale, or transfer of loan servicing provided to persons who apply for a mortgage-servicing loan as defined in 24 C.F.R. Section 3500.21(a).
		98. The Special Information Booklet given to residential mortgage loan applicants.

Home Ownership Counseling

Please send or hold the following documents as indicated:

Send	Hold	
		99. The notice delivered to borrowers regarding the availability of homeownership counseling.

Homeowners Protection Act

Please send or hold the following documents as indicated:

Send	Hold	
		100. Initial disclosures for fixed-rate, adjustable-rate, and high risk residential mortgages.
		101. Initial disclosures (at commitment) for residential mortgage loans with lender paid private mortgage insurance (PMI).
		102. Sample amortization schedules (showing actual transactions) for each type of loan.
		103. Annual disclosures for fixed-rate, adjustable-rate, and high risk residential mortgages, loans with lender paid PMI, and loans consummated prior to 7/29/99.
		104. Records of requests for cancellation.
		105. Report of loans for which PMI was terminated.
		106. Records of reviews and system testing (including computer program documentation) to confirm that calculations of amortization and loan to value ratios are accurate.

Consumer Compliance Examination Data Sheet for Loans

114. Please provide a loan report detailing loans originated (from [date] to [date]). Please segregate the report by month and break down loan types applicable to your bank. The list should include borrower name (short name is acceptable), origination date, and original amount. If codes are used on the report, please include the definition or meaning of each code. Fair lending examiners may request additional loan information at a later time. The following is an example of loan types broken down to specific categories.

Residential Consumer:
- Purchase Money Mortgage
- Refinance
- Residential Construction
- Home Equity Loans
- Home Improvement
- Home Equity Lines of Credit
- High Cost Mortgages
- Reverse Mortgages

Other Consumer:
- Overdraft Protection
- Installment Loans
- Credit Cards
- Indirect Auto
- Other Dealer Loans

Commercial:
- Secured by Real Estate
- Other Secured
- Credit Cards
- Unsecured

In addition, please provide the number of denied applications for each product type for the months of [*insert calendar months*].

Consumer Compliance Examination Data Sheet for Loans (continued)

115. Please check each feature applicable to your consumer loans:

	Purchase Money Mortgage		Owner-occupied Construction
	Refinance Mortgage		Required Interest Reserves
	Home Improvement		Optional Interest Reserves
	Home Equity Line of Credit		No Interest Reserves
	Private Mortgage Insurance		Consumer Installment
	Escrow		Overdraft Protection
	Variable Rate Mortgage*		Credit Cards
	Variable Rate Other Consumer*		Indirect Auto
	Loans in Special Flood Hazard Area		Simple Interest
	Credit Life/Disability Insurance		Rule of 78s
	Loans secured by a Deposit Account where Interest Rate on Deposit Account is less than 5%		Add-on Interest
	Vendor's Single Interest Insurance (VSI)		Guaranteed Automobile Protection Agreements (GAP)

* If the bank originates variable rate loans, please provide a list of all indexes used and the loan types applicable to each separate index.

Part III: DEPOSIT COMPLIANCE

116. Please list the names, titles and phone numbers of the officers and/or bank personnel who are appropriate contacts for specific information about compliance matters involving deposit accounts (Savings, CDs, MMDAs, Regulation CC, etc.).

Truth in Savings

Please provide the following information:

117. A description of any deposit accounts offered to consumers, identifying any new products introduced since the last compliance examination.

118. If the bank offered merchandise as a bonus or premium for certain deposits, provide details.

Please send or hold the following documents as indicated:

Send	Hold	
		119. Any written policies, procedures, practices and training materials relating to Truth in Savings.
		120. The initial disclosure form provided for each type of consumer deposit account since the last compliance examination, such as checking, savings and time deposits.
		121. The advance disclosure form for each account in which adverse changes in terms have occurred since the previous FDIC examination.
		122. A copy of one complete periodic statement (dated subsequent to the previous FDIC examination) for each type of interest bearing account which incurred maintenance fees.
		123. A copy of one complete periodic statement (dated subsequent to the previous FDIC examination) for each type of consumer account.
		124. The corresponding rate sheets for periods covered by periodic statements above.
		125. Notice forms used for maturing time accounts for both accounts with maturities less than one year and exceeding one year.

Interest on Deposits

Please provide the following information:

126. A description of the bank's procedures to monitor excessive activity in MMDAs, providing details including activity reports.

127. A description of the bank's procedures to monitor eligibility for NOW accounts, providing details including exception reports.

Please send or hold the following documents as indicated:

Send	Hold	
		128. Account agreements or other disclosures of limitations on transactions for money market deposit accounts (MMDAs).
		129. Records of customer notices and account closing or reclassification for repeated excessive transactions in MMDAs.
		130. The most recent trial balance for all NOW accounts, including full names, account numbers, and balances.
		131. Account agreements or other disclosure of early withdrawal restrictions or penalties and procedures for handling.
		132. Procedures and controls regarding finders or broker fees on demand deposits.

Electronic Fund Transfers (EFT)

Please provide the following information:

133. A description of your controls for issuing access devices.

134. A description of the terms and conditions for any bank loan programs involving electronic payments.

135. Please be prepared to provide access to records of error resolutions and consumer complaints, including correspondence with consumers, documentation of investigations, and tracking reports.

Please send or hold the following documents as indicated:

Send	Hold	
		136. A list of all EFT services performed by the bank, including, but not limited to: o Direct deposit (including Social Security transfers) o Preauthorized withdrawal of funds o Automated teller machine transfers o Point-of-sale terminal transfers
		137. Disclosure forms given to customers when opening an account and when adding EFT capabilities (ATM cards, Debit cards, etc.).
		138. EFT agreement and error resolution notice given to customers.
		139. A sample of periodic statements showing actual transaction activity (including all types of transfers, e.g., ATM deposits, direct deposits, preauthorized withdrawals, etc.); include any information printed on the back of the statements.
		140. A sample of ATM disclosures, fee notices, and receipts showing actual transaction activity.
		141. A sample of change in terms notices (if applicable) and records of transmittal
		142. Policies for liability on unauthorized electronic transfers, issuance of access devices, and preauthorized debits and credits.
		143. Any merchant agreements involving electronic fund transfers.

Expedited Funds Availability

Please provide the following information:

144. Describe your procedures for addressing Check 21 requirements, as incorporated into Regulation CC.

145. Describe to whom you provided the Check 21 disclosure.

Please send or hold the following documents as indicated:

Send	Hold	
		146. A copy of the Check 21 disclosure.
		147. The bank's procedures and/or procedures given to employees for providing funds availability and for placing holds.
		148. The bank's funds availability policy disclosures.
		149. Samples of the following showing transaction activity: a. Deposit receipts (or other notice) showing funds held and availability schedules for deposits of local and non-local checks b. Exception hold notices for each type of exception c. Case-by-case hold notices d. Pre-printed deposit slips and any special deposit slips

Part IV. INSURANCE AND INVESTMENTS

Insurance

Please provide the following information:

150. The name, title and phone number of the person who is the appropriate contact for specific information about insurance related compliance matters.

151. Is insurance sold in a physically distinct area from which deposits are taken? _____ (yes/no)

152. If "no", explain:
_____

153. How are insurance and annuities sold (select all that apply)?

☐	By the bank	☐	On behalf of the bank	☐	On bank premises

		Yes/No	If Yes, How Many?
154.	Do bank employees (employed solely by the bank) sell insurance?		
155.	Do bank subsidiary employees (employed solely by subsidiary) sell insurance on behalf of the bank or on bank premises?		
156.	Do bank subsidiary employees (employed dually by the bank and the subsidiary) sell insurance on behalf of the bank or on bank premises?		
157.	Do affiliate employees (employed solely by the affiliate) sell insurance on behalf of the bank or on bank premises?		
158.	Do affiliate employees (employed dually by the bank and the affiliate) sell insurance on behalf of the bank or on bank premises?		
159.	Do unaffiliated third parties (employed solely by the third party) sell insurance on behalf of the bank or on bank premises?		
160.	Do unaffiliated third parties (employed dually by the bank and the third party) sell insurance on behalf of the bank or on bank premises?		

161. Describe how bank employees who sell insurance or annuities are compensated:

162. Do bank employees who do not sell insurance receive compensation for referring customers to someone who does? If yes, describe the compensation plan:

163. Primary Insurance or Annuity Vendor (Name):

_____

(check one) □ First Vendor Used □ Same Vendor as last exam □ Different vendor

164. Insurance Products Offered (select all that apply)

	Auto		Health		Casualty		Life (including variable life)		
	Credit Life		Private Mortgage		Crop		Property		Other

165. Annuity Products Offered (select all that apply)

	Fixed		Variable

166. Does the bank have a subsidiary or affiliate that sells insurance or annuities?
____ yes/no Name of subsidiary or affiliate:

167. Does a bank subsidiary or affiliate underwrite insurance or annuities (i.e. the entity is responsible for insuring risks)? ___ yes/no
Name of subsidiary or affiliate:

168. Does the bank or any entity selling insurance/annuity products on its behalf or on its premises maintain an Internet site? ____ yes/no

If "yes", check those that apply in the table below:

	Contains Insurance Information	Able to initiate sales transaction	Provides link to insurance vendor
Bank Site			
Subsidiary Site			
Affiliate Site			
Unaffiliated Third Party Site			

Please send or hold the following documents as indicated:

Send	Hold	
		169. Policies and procedures including those relating to management oversight, internal controls, compensation (including referral compensation), and record-keeping.
		170. Agreements with third parties.
		171. Sample disclosures to customers or prospective customers and acknowledgement forms.
		172. Advertising and promotional material.
		173. Consumer complaints and records of resolution.
		174. Training material and records.
		175. Product management reports, including monitoring or audit reports.
		176. Regulatory reports.
		177. Sales personnel license records.

Investments

Please provide the following information:

178. The names, titles and phone numbers of the officers and/or bank personnel who are appropriate contacts for specific information about investment related compliance matters.

179. How are investments sold? (select all that apply)

	By the bank		On bank premises		Through referrals from the bank

180. If investments are sold on bank premises, is it in a physically distinct area from which deposits are taken? _____ (yes/no) If "no", explain:

	Yes/No	If Yes, How Many?
181. Do bank employees (employed solely by the bank) sell investments?		
182. Do bank subsidiary employees (employed solely by subsidiary) sell investments on bank premises or pursuant to referrals from the bank?		
183. Do bank subsidiary employees (employed dually by the bank and subsidiary) sell investments on bank premises or pursuant to referrals from the bank?		
184. Do bank affiliate employees (employed solely by the		

	affiliate) sell investments on bank premises or pursuant to referrals from the bank?		
185.	Do bank affiliate employees (employed dually by the bank and the affiliate) sell investments on bank premises or pursuant to referrals from the bank?		
186.	Do unaffiliated third parties (employed solely by the third party) sell investments on bank premises or pursuant to referrals from the bank?		
187.	Do unaffiliated third parties (employed dually by the bank and the third party) sell investments on bank premises or pursuant to referrals from the bank?		

188. If bank employees sell investments, describe how they are compensated:

189. Do bank employees who do not sell investments receive compensation for referring customers to someone who does? If yes, describe the compensation plan:

190. Primary Investment Vendor (Name):

(check one)

	First Vendor Used		Same Vendor as last exam		Different vendor from last exam

191. Investment Products Offered (select all that apply)

	Corporate Securities and Bonds		Government Securities
	Mutual Funds: Money Market		Mutual Funds: Corporate Securities
	Mutual Funds: Corporate Bonds		Mutual Funds: Corp. Securities and Bonds
	Mutual Funds: International		Mutual Funds: Other
	Retail Repurchase Agreements		Other Investment Product
	Variable Annuities		

192. Does the bank offer proprietary products?_____ (yes/no)
If "yes", indicate all proprietary products offered below:

	Government Securities		Mutual Funds: Money Market
	Mutual Funds: Corporate Securities		Mutual Funds: Corporate Bond
	Mutual Funds: International		Mutual Funds: Corp. Securities and Bonds
	Other Investment Products		Variable Annuities

193. What entity serves as the proprietary products manager/advisor?

	Bank		Bank Subsidiary
	Bank Affiliate		Other Financial Institution

194. Does the bank offer sweep accounts? ___(yes/no)

Bank sweep accounts transfer funds between deposit accounts and (select all that apply)…

	Mutual funds		Retail repurchase agreements
	Government securities		Other investments

195. Does the bank or any entity that sells investment products on its behalf or on its premises maintain an Internet site? ____ (yes/no)

If "yes", check those that apply in the table below.

	Contains Investment Information	Able to initiate sales transaction	Provides link to investment vendor
Bank Site			
Subsidiary Site			
Affiliate Site			
Unaffiliated Third Party Site			

196. Does a bank affiliate underwrite securities? ____ (yes/no)
Name of affiliate:

197. Has the bank, its subsidiary, or its affiliate registered with the SEC as a broker? ____(yes/no)
Name of registered party:

198. Has the bank, its subsidiary, or its affiliate registered with the SEC as a dealer? ____(yes/no)
Name of registered party:

Recordkeeping, Notification, and Settlement

199. Are securities transactions effected by the bank subject to Part 344 of the FDIC's regulations? ____ (yes/no)
If "no", identify the applicable exception contained in Part 344.2:

200. If bank securities transactions are subject to Part 344, where does the bank maintain chronological sales records, account identification records, order tickets, listing of broker/dealers that effected transactions, and copies of notifications provided to customers?

Please send or hold the following documents as indicated:

Send	Hold	
		201. Policies and procedures including those relating to management oversight, internal controls, compensation (including referral compensation), and record-keeping.
		202. Agreements with third parties.
		203. Sample disclosures to customers or prospective customers and acknowledgement forms.
		204. Sample customer notifications and account statements.
		205. Advertising and promotional material.
		206. Consumer complaints and records of resolution.
		207. Training material and records.
		208. Product management reports, including monitoring or audit reports.
		209. Regulatory reports.
		210. Reports of personal securities trading by personnel subject to Part 344.9.
		211. Sales personnel license records.

Part V: PRIVACY AND CONSUMER INFORMATION

Right to Financial Privacy

Please provide the following information:

212. If the bank provided any Federal government authority access to the financial records of a customer, then provide the name and location of the individual who can provide access to any files relating to the release of this information.

Privacy of Consumer Financial Information

Please provide the following information:

213. Name and location of the individual responsible for the administration of the bank's privacy policies and procedures.

214. If the bank discloses nonpublic personal information about consumers to nonaffiliated third parties to market the bank's own products or services, or market financial products or services offered pursuant to joint marketing agreements between the bank and another financial institution, then provide details.

215. If the bank receives nonpublic personal information about consumers from nonaffiliated financial institutions, then provide details.

216. If the bank discloses, directly or through affiliates, account numbers or similar access numbers or codes for consumers' credit card accounts, deposit accounts, or transaction accounts with nonaffiliated third parties (other than a consumer reporting agency) for use in marketing, then provide details.

217. If the bank shares nonpublic personal information with nonaffiliated third parties subject to an opt-out, provide details about the about opt-out methods, systems, and controls in place to ensure that information is not shared after a consumer has opted-out.

Please send or hold the following documents as indicated:

Send	Hold	
		218. The privacy notice(s) (initial, annual, and/or revised) and opt out notice(s), if applicable, that the bank delivers.
		219. Contracts and agreements with nonaffiliated third parties with whom you have joint marketing agreements, or those that perform marketing services on your behalf.

Fair Credit Reporting Act (FCRA)

Please provide the following information:

220. Describe the controls in place to ensure that consumer report information obtained from consumer reporting agencies are obtained only for permissible purposes. Include a description of controls on employee access to on-line credit reports and credit score information.

221. Describe the bank's policies and procedures for sharing information with affiliates. Include a description of the type of information shared, and the purposes for which it is shared. If information is shared subject to an opt-out notice, please describe the opt-out methods, systems, and controls in place to ensure that information is not shared after a consumer has opted-out.

222. Describe the bank's policies for using medical information about a consumer in connection with any determination of the consumer's eligibility, or continued eligibility for credit.

223. Describe the bank's policies or processes for obtaining consumer reports on prospective or current bank employees.

224. Describe the criteria that were used to select consumers using prescreened consumer reports. Include both the pre-screen criteria and any post-screen criteria and requirements.

225. Describe the bank's policies and processes for furnishing information to consumer reporting agencies. Include routine transmissions of data and the process for resolving accuracy and error disputes received from consumer reporting agencies and from consumers.

226. Describe the bank's policies and procedures when a consumer report containing a fraud or active duty alert is received by the bank.

Please send or hold the following documents as indicated:

Send	Hold	
		227. Copies of contract(s) with each consumer reporting agency from which the bank obtains consumer reports.
		228. Copies of disclosures and notices used in conjunction with obtaining consumer reports on prospective or current bank employees.
		229. Sample of prescreening-related consumer correspondence, including disclosures to consumers, notification of opt-out procedures, and all solicitation materials.
		230. Instructions to consumer reporting agencies and sample output for each

		prescreening activity.
		231. Records of responses to solicitations that did not result in an extension of credit or insurance.
		232. Sample of Credit Score Disclosure and Notice to Home Loan Applicants.
		233. Sample Negative Information Notice.
		234. If the bank is a consumer reporting agency, please provide: a. Sample consumer reports provided by the bank b. Procedures for providing consumer reports c. Notice to providers of information included in consumer reports d. Procedures for providing disclosures to consumers, including sample report and notices e. Procedures for handling investigative reports and reports for employment purposes f. List of fees charged in connection with disclosures or notification

Children's Online Privacy Protection

Please provide the following information:

235. If the bank operates an Internet site or online service directed to children that collects or maintains personal information about them, then provide details.

236. If the bank operates a general audience Internet Web site or other online service that could collect or maintain personal information from children online, then provide details.

237. If you answered yes to either question 1 or 2, does the bank participate in an FTC-approved, self-regulatory program? If yes, provide details.

Please send or hold the following documents as indicated:

Send	Hold	
		238. Notice(s) to parents of the bank's practices with regard to the collection, use, and/or disclosure of a child's personal information.

Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM)

Please provide the following information:

239. Describe the bank's policies and procedures for complying with CAN-SPAM. Include a brief description of the source of e-mail within the bank and the controls over the content and distribution of e-mail subject to the Act.

240. Describe the bank's process for receiving, processing, and honoring opt-out choices returned to the bank from recipients of e-mail subject to the Act.

Please send or hold the following documents as indicated:

Send	Hold	
		241. List of products or services that the bank has promoted by e-mail.
		242. Sample of e-mail(s) sent.
		243. E-mail address used by the bank to receive opt-out requests from recipients of bank e-mail subject to the Act.

Telephone Consumer Protection Act (TCPA)

Please provide the following information:

244. Describe the bank's policies and procedures for complying with the TCPA.

245. Describe the bank's process for honoring and maintaining records of do-not-call instructions as well as the bank's process for complying with national do-not-call rules.

Please send or hold the following documents as indicated:

Send	Hold	
		246. List of marketing or promotional programs for products and services that the bank promoted with telemarketing either directly or through a third party vendor.

Part VI. ELECTRONIC BANKING

Please provide the following information:

247. Bank's Web site address: _____

248. The names, titles and telephone numbers of the officers and/or bank personnel who are appropriate contacts for specific information about the compliance aspects of the bank's electronic banking activities.

249. If the bank has plans for expanding any electronic banking activities, programs, or capabilities in the near future, provide details.

Mark all that apply with an X

250. **Delivery Channels:**

	Internet		PC Banking (Dial-Up)		Phone Banking
	Automated Loan Machines		Electronic Money Products		

Online Activities Conducted (via Internet or PC Banking):

251. **Informational Content (including advertisements, rate displays, lists of services, etc.)**

	Deposit-Related
	Lending-Related
	Non-deposit Products

252. **Information Exchange and Transactional Functions**

Deposit-Related

	Disclosures Online		Account Application		Transfer Funds
	Review Account Statement		Bill Payment Services		

Lending-Related

	Disclosures Online		Account Application		Transfer Funds
	Review Account Statement		Bill Payment from Credit Line		

Non-deposit Products

	Disclosures Online		Account Application		Transfer Funds
	Review Account				

	Statement

Electronic Mail

	Transmit Disclosures		Accept Customer Inquiries/Complaints

Electronic Signatures in Global and National Commerce Act (E-Sign)

Please send or hold the following documents as indicated:

Send	Hold	
		253. Sample disclosures used to obtain customers' affirmative consent to receive disclosures electronically.

Part VII. COMMUNITY REINVESTMENT ACT

Please send or hold the following documents as indicated:

Send	Hold	
		254. Any CRA self-assessment(s) or an analysis of the geographic/income distribution of loans performed by the bank or other outside organization.
		255. A map or description of your assessment area(s). If the assessment area(s) consist of less than whole political subdivisions, describe how the area was determined.
		256. The public comments file.
		257. Documentation concerning community development activities that are funded or provided by the bank.
		258. Information produced in the normal course of business about any specific efforts by your bank to respond to lending, investment and service opportunities in your assessment area. Sources of such information may include: o Information about lending, investment, and service opportunities in your bank's assessment area(s) either developed by your bank or obtained from community organizations, state, local and tribal governments, economic development agencies, or other sources o The bank's business plan, strategic plan and annual report o Product assessment reports o Economic and demographic analyses o Customer surveys aimed at identifying product and service needs o Reports on participation in government insured, guaranteed or subsidized loan programs o Information relevant to your bank's ability to meet community credit needs based on: o financial condition and size o statutory authority/legal restrictions o other factors.
		Banks Subject To Large Bank CRA Data Collection Only: 259. Separate electronic downloads of your bank's CRA data on small business and small farm lending for all years since [Click **here** and type [Timeframe], including your current year-to-date CRA Loan Application Register. If your bank uses the FFIEC's CRA Data Collection Software, these files can be created by using the *"Export For Other Purpose"* function under the export option in the software. The *"Export For Other Purpose"* option will create a submission for internal use only.

Section 109 – Interstate Banking and Branching Efficiency Act of 1994 (IBBEA)

Please provide the following information:

260. A list of any interstate branches in existence for one year or more that were established pursuant to the IBBEA.

261. Has the bank or any of its branches been controlled by an out-of-state bank holding company for one year or more? _____ (yes/no). If yes, identify the branches.

262. If you answered yes to either question 1 or 2, does the bank have sufficient data to calculate a statewide loan-to-deposit ratio in each respective host State? *Note: The bank is not required to provide or assist in providing this information.*

263. A list of all census tracts located within your assessment area(s).

264. A list of branches opened or closed during the current year and each of the prior two calendar years (including street addresses and geographies), and a list of services generally offered at the branches.

265. ***Small bank only***: The bank's performance with respect to qualified investments and services may be used in the CRA evaluation to raise a Satisfactory CRA rating to Outstanding, but it cannot be used to lower a rating that otherwise would have been assigned. A bank may, however, receive an Outstanding rating without the consideration of investments and services. If you would like the bank's investments and services to be reviewed during the examination, then please respond to the investment and service portions of the following request

Branch Closings

Please send or hold the following documents as indicated:

Send	Hold	
		266. A copy of any branch closing or relocation policy.

(This page intentionally left blank.)

[COMPLIANCE AND CRA]

[date]

BANK_OFF_FN BANK_OFF_LN
BANK TITLE
BANK NAME
BANK ADDRESS
BANK CITY ST ZIP

Dear SAL_TITLE BANK_OFF_LN,

A compliance examination of your institution is scheduled to begin on
[Click **here** and type [Timeframe]. This examination will review how well your institution administers its responsibilities to comply with various consumer protection and fair lending laws and regulations, and the Community Reinvestment Act.

Enclosed are two documents that request certain information and materials essential to the examination: a **Compliance Information and Document Request**, and an **Electronic Data Download Request**. These requests are made early in the examination process to minimize disruption to your institution's daily routine. Providing the requested material for off-site review will enhance the efficiency of the examination and reduce the time examiners spend in your institution. The specific information and materials requested are based on the discussion Examiner [EXAMLN] had with [you or other bank officer] on [date].

Compliance Information and Document Request (CIDR)

Please complete the questionnaire and return it with all appropriate supporting documentation to the FDIC's RO Field Office within
[Click **here** and type [Number of Days] days of receipt of this letter. Materials designated for off-site review are marked **"Send"** on the request. Materials that we prefer to be assembled and made available at the beginning of the on-site examination are marked **"Hold"**. It is not necessary to deliver these items to the Field Office. Unless otherwise specified, the "review period" referred to in the CIDR is from
[Click **here** and type [Date], which is the date of your most recent FDIC Compliance Examination, until the date you complete the questionnaire.

For your convenience, we have enclosed the CIDR both on a diskette in Microsoft Word and in hard copy. Please use the self-addressed label for your submission. (If the diskette is used, please include a printout of the completed CIDR.)

Electronic Data Download Request

This request involves a computer-generated download of your loan portfolio that includes each borrower and the major fields you use when inputting a loan on your computer system. The fields of information we are interested in obtaining are specified on the enclosed document.

If you recently provided a download in conjunction with another FDIC or State examination and it contains most of the information we are requesting, we can use the same download. If you retained the file designed to extract data, simply re-execute the file as of the date you return the requested materials. If you use a servicer, they should be able to provide the information necessary to extract this information and many will export the data for you. If your servicer is willing to provide the data, but at a cost you find excessive, please contact Examiner [EXAMFN EXAMLN] at [FO PHONE] to arrange for providing the information in hard copy.

Please feel free to contact me at [FO PHONE] if you have any questions or concerns relative to the information requested.

Thank you in advance for your cooperation and assistance.

Sincerely,

[FOS]
Field Supervisor

Enclosures:
Compliance Information and Document Request
Electronic Data Download Request
3 ½ ” Diskette
Pre-addressed labels

[COMPLIANCE ONLY]

[date]

BANK_OFF_FN BANK_OFF_LN
BANK TITLE
BANK NAME
BANK ADDRESS
BANK CITY ST ZIP

Dear SAL_TITLE BANK_OFF_LN,

A compliance examination of your institution is scheduled to begin on [Click **here** and type [Timeframe]. This examination will review how well your institution administers its responsibilities to comply with various consumer protection and fair lending laws and regulations.

Enclosed are two documents that request certain information and materials essential to the examination: a **Compliance Information and Document Request**, and an **Electronic Data Download Request**. These requests are made early in the examination process to minimize disruption to your institution's daily routine. Providing the requested material for off-site review will enhance the efficiency of the examination and reduce the time examiners spend in your institution. The specific information and materials requested are based on the discussion Examiner [EXAMLN] had with [you or other bank officer] on [date].

Compliance Information and Document Request (CIDR)

Please complete the questionnaire and return it with all appropriate supporting documentation to the FDIC's [RO] Field Office within [Click **here** and type [Number of Days] days of receipt of this letter. Materials designated for off-site review are marked **"Send"** on the request. Materials that we prefer to be assembled and made available at the beginning of the on-site examination are marked **"Hold"**. It is not necessary to deliver these items to the Field Office. Unless otherwise specified, the "review period" referred to in the CIDR is [Click **here** and type [Date], which is the date of your most recent FDIC Compliance Examination, until the date you complete the questionnaire.

For your convenience, we have enclosed the CIDR both on a diskette in Microsoft Word and in hard copy. Please use the self-addressed label for your submission. (If the diskette is used, please include a printout of the completed CIDR.)

Electronic Data Download Request

This request involves a computer-generated download of your loan portfolio that includes each borrower and the major fields you use when inputting a loan on your computer system. The fields of information we are interested in obtaining are specified on the enclosed document. Your institution's participation in providing this information electronically will enhance the efficiency of the examination and reduce the time examiners spend in your institution. Having this information electronically allows examiners to sort the data into samples for the compliance loan review, if necessary.

If you recently provided a download in conjunction with another FDIC or State examination and it contains most of the information we are requesting, we can use the same download. If you retained the file designed to extract data, simply re-execute the file as of the date you return the requested materials. If you use a servicer, they should be able to provide the information necessary to extract this information and many will export the data for you. If your servicer is willing to provide the data, but at a cost you find excessive, please contact Examiner [EXAMFN EXAMLN] at [FO PHONE] to arrange for providing the information in hard copy.

Please feel free to contact me at [FO PHONE] if you have any questions or concerns relative to the information requested.

Thank you in advance for your cooperation and assistance.

Sincerely,

[FOS]
Field Supervisor

Enclosures:
Compliance Information and Document Request
Electronic Data Download Request
3 $^{1}/_{2}$ " Diskette
Pre-addressed labels

IV. Fair Lending Laws and Regulations

Contents

Fair Lending Laws and Regulations	**IV–1.1**
Part I—Examination Scope Guidelines	IV–1.3
Part II—Compliance Management Review	IV–1.10
Part III—Examination Procedures	IV–1.10
Part IV—Obtaining and Evaluating Responses from the Lender and Concluding the Examination	IV–1.22
Appendices	**IV-2.1**
Compliance Management Analysis Checklist	IV-2.1
Evaluating Responses to Evidence of Disparate Treatment	IV-2.13
Fair Lending Sample Size	IV-2.17
Marginal Transactions	IV-2.19
Potential Scoping Information	IV-2.21
Special Analyses	IV-2.23
Streamlining the Examination	IV-2.27
FDIC Examination Procedures for “Low-Risk” Institutions	IV-2.29
References	IV-2.29
Job Aids	IV-2.29

(This page intentionally left blank.)

Fair Lending Laws and Regulations[1]

Introduction

This overview provides a basic and abbreviated discussion of federal fair lending laws and regulations. It is adapted from the Interagency Policy Statement on Fair Lending issued in March 1994.

Lending Discrimination Statutes and Regulations

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant's receipt of income derived from any public assistance program; or
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

The Federal Reserve Board's Regulation B, found at 12 CFR Part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official staff interpretations of the regulation are found in Supplement I to 12 CFR Part 202.

The Fair Housing Act (FHAct) prohibits discrimination in all aspects of "residential real-estate related transactions," including but not limited to

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;
- Selling, brokering, or appraising residential real estate; or
- Selling or renting a dwelling.

The FHAct prohibits discrimination based on:

- Race or color;
- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); or
- Handicap.

The Department of Housing and Urban Development's (HUD) regulations implementing the FHAct are found at 24 CFR Part 100.

Because both the FHAct and the ECOA apply to mortgage lending, lenders may not discriminate in mortgage lending based on any of the prohibited factors in either list.

Under the ECOA, it is unlawful for a lender to discriminate on a prohibited basis in any aspect of a credit transaction, and under both the ECOA and the FHAct, it is unlawful for a lender to discriminate on a prohibited basis in a residential real-estate-related transaction. Under one or both of these laws, a lender may not, because of a prohibited factor:

- Fail to provide information or services or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards.
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit.
- Refuse to extend credit or use different standards in determining whether to extend credit.
- Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan.
- Use different standards to evaluate collateral.
- Treat a borrower differently in servicing a loan or invoking default remedies.
- Use different standards for pooling or packaging a loan in the secondary market.

A lender may not express, orally or in writing, a preference based on prohibited factors or indicate that it will treat applicants differently on a prohibited basis.

A lender may not discriminate on a prohibited basis because of the characteristics of

- An applicant, prospective applicant, or borrower.
- A person associated with an applicant, prospective applicant, or borrower (for example, a co-applicant, spouse, business partner, or live-in aide).
- The present or prospective occupants of either the property to be financed or the neighborhood or other area where property to be financed is located.

Finally, the FHAct requires lenders to make reasonable accommodations for a person with disabilities when such

1 This section fully incorporates the Interagency examinations procedures revised as of August 2004.

accommodations are necessary to afford the person an equal opportunity to apply for credit.

Types of Lending Discrimination

The courts have recognized three methods of proof of lending discrimination under the ECOA and the FHAct:

- Overt evidence of disparate treatment
- Comparative evidence of disparate treatment
- Evidence of disparate impact.

Disparate Treatment

The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (**overt evidence**) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (**comparative evidence**).

Overt Evidence of Disparate Treatment. There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.

Example: A lender offered a credit card with a limit of up to $750 for applicants aged 21-30 and $1500 for applicants over 30. This policy violated the ECOA's prohibition on discrimination based on age.

There is overt evidence of discrimination even when a lender expresses—but does not act on—a discriminatory preference.

Example: A lending officer told a customer, "We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and we have to comply with the law." This statement violated the FHAct's prohibition on statements expressing a discriminatory preference as well as Section 202.5(a) of Regulation B, which prohibits discouraging applicants on a prohibited basis.

Comparative Evidence of Disparate Treatment. Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself. It is considered by courts to be intentional discrimination because no credible, nondiscriminatory reason explains the difference in treatment on a prohibited basis.

Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified. Discrimination may more readily affect applicants in this middle group for two reasons. First, if the applications are "close cases," there is more room and need for lender discretion. Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in completing an application. The lender may, for example, propose solutions to credit or other problems regarding an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

Example: A nonminority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with them and determined that the adverse information, a judgment against the couple, was incorrect since the judgment had been vacated. The nonminority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

The foregoing is an example of disparate treatment of similarly situated applicants, apparently based on a prohibited factor, in the amount of assistance and information the lender provided.

If a lender has apparently treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender's explanation is found to be not credible, the agency may find that the lender intentionally discriminated.

Redlining is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located. Redlining may violate both the FHAct and the ECOA.

Disparate Impact

When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a "disparate impact."

Example: A lender's policy is not to extend loans for single family residences for less than $60,000. This policy has been in effect for ten years. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live.

Although the precise contours of the law on disparate impact as it applies to lending discrimination are under development,

it has been clearly established the single fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation.

When an Agency finds that a lender's policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. Finally, evidence of *discriminatory intent* is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FHAct or ECOA.

These procedures do not call for examiners to plan examinations to identify or focus on potential disparate impact issues. The guidance in this section is intended to help examiners recognize potential disparate impact situations if they happen to encounter them. Guidance in the **Appendix** tells them how to obtain relevant information regarding such situations and how to evaluate and follow up on it, as appropriate.

General Guidelines

These procedures are intended to be a basic and flexible framework to be used in the majority of fair lending examinations conducted by the FFIEC agencies. They are also intended to guide examiner judgment, not to supplant it. The procedures can be augmented by each agency, which can supply such additional procedures and details as are necessary to implement them effectively.

Although these procedures will apply to most examinations, each agency may continue to use for limited numbers of examinations the distinct approaches it has developed that are appropriate for select classes of institutions. Such approaches include, for example, the statistical modeling that some of the agencies use in selected examinations to assist in determining whether race or national origin was a factor in credit decisions.

For a number of aspects of lending—for example, credit scoring and loan pricing—the "state of the art" is more likely to be advanced if the agencies have some latitude to incorporate promising innovations. These interagency procedures provide for that.

Any references in these procedures to options, judgment, etc., of "examiners" means discretion within the limits provided by that examiner's agency. An examiner should use these procedures in conjunction with his or her own agency's priorities, examination philosophy, and detailed guidance for implementing these procedures. These procedures should not be interpreted as providing an examiner greater latitude than his or her own agency would. For example, if an agency's policy is to review compliance management systems even in small banks, an examiner for that agency must conduct such a review rather than interpret Part II of these interagency procedures as leaving the review to the examiner's option.

The procedures emphasize racial and national origin discrimination in residential transactions, but the key principles can be applied to other prohibited bases and to nonresidential transactions.

Finally, these procedures focus on analyzing lender compliance with the broad, nondiscriminatory requirements of the ECOA and the FHAct. They do not address such explicit or technical compliance provisions as the signature rules or adverse action notice requirements in sections 202.7 and 202.9, respectively, of Regulation B.

Part I—Examination Scope Guidelines

Background

The **scope** of an examination encompasses the loan product(s), market(s), decision center(s), time frame, and prohibited basis and control group(s) to be analyzed during the examination. These procedures refer to each potential combination of those elements as a "**Focal Point**." Setting the scope of an examination involves, first, identifying all of the potential focal points that appear worthwhile to examine. Then, from among those, examiners select the focal point(s) that will form the scope of the examination, based on risk factors, priorities established in these procedures or by their respective agencies, the record from past examinations, and other relevant guidance. This phase includes obtaining an overview of an institution's compliance management system as it relates to fair lending.

When selecting focal points for review, examiners may determine that the institution has performed "self-tests" or "self-evaluations" related to specific lending products. The difference between "self tests" and "self evaluations" is discussed in the Streamlining the Examination section of the Appendix. Institutions must share all information regarding "self-evaluations" and certain limited information related to "self-tests." Institutions may choose to voluntarily disclose additional information about "self-tests." Examiners should make sure that institutions understand that voluntarily sharing the results of self-tests will result in a loss of confidential status of these tests. Information from "self-evaluations" or "self-tests" may allow the scoping to be streamlined. Refer to the *Streamlining the Examination* section of the **Appendix** for additional details.

Scoping may disclose the existence of circumstances—such as the use of credit scoring or the amount of residential lending—which, under an agency's policy, call for the use of regression analysis or other statistical methods of identifying potential discrimination with respect to one or more loan products. Where that is the case, the agency's specialized procedures should be employed for such loan products rather than the procedures set forth below.

Setting the **intensity** of an examination means determining the breadth and depth of the analysis that will be conducted on the selected loan product(s). This process entails a more involved analysis of the institution's compliance risk management processes, particularly as it relates to selected products, to reach an informed decision regarding how large a sample of files to review in any transactional analyses performed and whether certain aspects of the credit process deserve heightened scrutiny.

Part I of these procedures provides guidance on establishing the scope of the examination. Part II — Compliance Management Review — provides guidance on determining the intensity of the examination. There is naturally some interdependence between these two phases. Ultimately the scope and intensity of the examination will determine the record of performance that serves as the foundation for agency conclusions about institutional compliance with fair lending obligations. The examiner should employ these procedures and the organization of these guidelines to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution's examination of fair lending performance.

In cases where information already in the possession of an agency provides examiners with guidance on priorities and risks for planning an upcoming examination, such information may expedite the scoping process and make it unnecessary to carry out all of the steps below. For example, the report of the previous fair lending examination may have included recommendations for the focus of the next examination.

The scoping process can be performed either off-site, on-site, or both, depending on whatever is determined most feasible. In the interest of minimizing burdens on both the examination team and the lender, requests for information from the institution should be carefully thought out so as to include only the information that will clearly be useful in the examination process. Finally, any off-site information requests should be made sufficiently in advance of the on-site schedule to permit institutions adequate time to assemble necessary information and provide it to the examination team in a timely fashion. (*See* the **Appendix** on "**Potential Scoping Information**" for guidance on additional information that the examiner might wish to consider including in a request).

Examiners should focus the examination based on:

- An understanding of the credit operations of the institution;
- The risk that discriminatory conduct may occur in each area of those operations; and
- The feasibility of developing a factually reliable record of an institution's performance and fair lending compliance in each area of those operations.

Understanding Credit Operations

Before evaluating the potential for discriminatory conduct, the examiner should review sufficient information about the institution and its market to understand the credit operations of the institution and the representation of prohibited basis group residents within the markets where the institution does business. The level of detail to be obtained at this stage should be sufficient to identify whether any of the risk factors in the steps below are present. Relevant background information includes:

- The types and terms of credit products offered, differentiating among residential, consumer and other categories of credit.
- The volume of, or growth in, lending for each of the credit products offered.
- The demographics (i.e., race, national origin, etc.) of the credit markets in which the institution is doing business.
- The institution's organization of its credit decision-making process, including identification of the delegation of separate lending authorities and the extent to which discretion in pricing or setting credit terms and conditions is delegated to various levels of managers, employees or independent brokers or dealers.
- The types of relevant documentation/data that are available for various loan products and what is the relative quantity, quality and accessibility of such information. (i.e., for which loan product(s) will the information available be most likely to support a sound and reliable fair lending analysis.)
- The extent to which information requests can be readily organized and coordinated with other compliance examination components to reduce undue burden on the institution. (Do not request more information than the exam team can be expected to utilize during the anticipated course of the examination.)

In thinking about an institution's credit markets, the examiner should recognize that these markets may or may not coincide with an institution's CRA assessment area(s). Where appropriate, the examiner should review the demographics for a broader geographic area than the assessment area.

Where an institution has multiple underwriting or loan processing centers or subsidiaries, each with fully independent credit-granting authority, consider evaluating each center and/or subsidiary separately, provided a sufficient number of loans exist to support a meaningful analysis. In determining the scope of the examination for such institutions, examiners should consider whether:

- Subsidiaries should be examined. The agencies will hold a financial institution responsible for violations by its direct subsidiaries, but not typically for those by its affiliates (unless the affiliate has acted as the agent for the institution or the violation by the affiliate was known or should have been known to the institution before it became involved in the transaction or purchased the affiliate's loans). When seeking to determine an institution's relationship with affiliates that are not supervised financial institutions, limit the inquiry to what can be learned in the institution and do not contact the affiliate.
- The underwriting standards and procedures used in the entity being reviewed are used in related entities not scheduled for the planned examination. This will help examiners to recognize the potential scope of policy-based violations.
- The portfolio consists of applications from a purchased institution. If so, for scoping purposes, examiners should consider the applications as if they were made to the purchasing institution. (For comparison purposes, applications evaluated under the purchased institution's standards should not be compared to applications evaluated under the purchasing institution's standards.)
- The portfolio includes purchased loans. If so, examiners should look for indications that the institution specified loans to purchase based on a prohibited factor or caused a prohibited factor to influence the origination process.
- A complete decision can be made at one of the several underwriting or loan processing centers, each with independent authority. In such a situation, it is best to conduct on-site a separate comparative analysis at each underwriting center. If covering multiple centers is not feasible during the planned examination, examiners should review one during the planned examination and others in later examinations.
- Decision-making responsibility for a single transaction may involve more than one underwriting center. For example, an institution may have authority to decline mortgage applicants, but only the mortgage company subsidiary may approve them. In such a situation, examiners should learn which standards are applied in each entity and the location of records needed for the planned comparisons.
- Any third parties, such as brokers or contractors, are involved in the credit decision and how responsibility is allocated among them and the institution. The institution's familiarity with third party actions may be important, for a bank may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

If the institution is large and geographically diverse, examiners should select only as many markets or underwriting centers as can be reviewed readily in depth, rather than selecting proportionally to cover every market. As needed, examiners should narrow the focus to the MSA or underwriting center that is determined to present the highest discrimination risk. Examiners should use LAR data organized by underwriting center, if available. After calculating denial rates between the control group and minorities for the underwriting centers, examiners should select the centers with the highest disparities. If underwriting centers have fewer than five black, Hispanic, or Native American denials, examiners should not examine for racial discrimination. Instead, they should shift the focus to other loan products or prohibited bases.

Evaluating the Potential for Discriminatory Conduct

Step One: Develop an Overview

Based on his or her understanding of the credit operations and product offerings of an institution, an examiner should determine the nature and amount of information required for the scoping process and should obtain and organize that information. No single examination can reasonably be expected to evaluate compliance performance as to every prohibited basis, in every product, or in every underwriting center or subsidiary of an institution. In addition to information gained in the process of Understanding Credit Operations above, the examiner should keep in mind the following factors when selecting products for the scoping review:

- Which products and prohibited bases were reviewed during the most recent prior examination(s) and, conversely, which products and prohibited bases have not recently been reviewed?
- Which prohibited basis groups make up a significant portion of the institution's market for the different credit products offered?
- Which products and prohibited basis groups the institution reviewed using either a voluntarily disclosed self-test or a self-evaluation?

Based on consideration of the foregoing factors, the examiner should request information for all residential and other loan products considered appropriate for scoping in the current examination cycle. In addition, wherever feasible, examiners should conduct preliminary interviews with the lender's key underwriting personnel. Using the accumulated information, the examiner should evaluate the following, as applicable:

- Underwriting guidelines, policies, and standards.
- Descriptions of credit scoring systems, including a list of factors scored, cutoff scores, extent of validation, and any guidance for handling overrides and exceptions. (Refer to Part A of the Credit Scoring Analysis section of the **Appendix** for guidance.)
- Applicable pricing policies and guidance for exercising discretion over loan terms and conditions.
- The institution's corporate relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions.
- Loan application forms.
- HMDA/LAR or loan registers and lists of declined applications.
- Description(s) of databases maintained for loan product(s) to be reviewed, especially any record of exceptions to underwriting guidelines.
- Copies of any consumer complaints alleging discrimination and loan files related thereto.
- Descriptions of any compensation system that is based on loan production or pricing.
- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping and any monitoring protocols.
- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs.

Step Two: Identify Compliance Program Discrimination Risk Factors

Review information from agency examination work papers, institutional records and any available discussions with management representatives in sufficient detail to understand the organization, staffing, training, recordkeeping, auditing and policies of the institution's fair lending compliance systems. Review these systems and note the following risk factors:

C1. Overall institution compliance record is weak.

C2. Prohibited basis monitoring information is incomplete.

C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.

C4. Fair lending problems were previously found in one or more bank products.

C5. The size, scope, and quality of the compliance management program, including senior management's involvement, is materially inferior to programs customarily found in institutions of similar size, market demographics and credit complexity.

C6. The institution has not updated compliance guidance to reflect changes in law or in agency policy.

Consider these risk factors and their impact on particular lending products and practices as you conduct the product specific risk review during the scoping steps that follow. Where this review identifies fair lending compliance system deficiencies, give them appropriate consideration as part of the Compliance Management Review in Part II of these procedures.

Step Three: Review Residential Loan Products

Although home mortgages may not be the ultimate subject of every fair lending examination, this product line must at least be considered in the course of scoping every institution that is engaged in the residential lending market.

Divide home mortgage loans into the following groupings: home purchase, home improvements, and refinancings. Subdivide those three groups further if an institution does a significant number of any of the following types or forms of residential lending, and consider them separately:

- Government-insured loans
- Mobile home or factory housing loans
- Wholesale, indirect and brokered loans
- Portfolio lending (including portfolios of Fannie Mae/ Freddie Mac rejections)

In addition, determine whether the lender offers any conventional "affordable" housing loan programs and whether their terms and conditions make them incompatible with regular conventional loans for comparative purposes. If so, consider them separately.

If previous examinations have demonstrated the following, then an examiner may limit the focus of the current examination to alternative underwriting or processing centers or to other residential products that have received less scrutiny in the past:

- A strong fair lending compliance program.
- No record of discriminatory transactions at particular decision centers or in particular residential products.
- No indication of a significant change in personnel, operations or underwriting standards at those centers or in those residential products.
- No unresolved fair lending complaints, administrative proceedings, litigation or similar factors.

Step Four: Identify Residential Lending Discrimination Risk Factors

- Review the lending policies, marketing plans, underwriting, appraisal and pricing guidelines, broker/agent agreements and loan application forms for each residential loan product

that represents an appreciable volume of, or displays noticeable growth in, the institution's residential lending.

- Review also any available data regarding the geographic distribution of the institution's loan originations with respect to the race and national origin percentages of the census tracts within its assessment area or, if different, its residential loan product lending area(s).
- Conduct interviews of loan officers and other employees or agents in the residential lending process concerning adherence to and understanding of the above policies and guidelines as well as any relevant operating practices.
- In the course of conducting the foregoing inquiries, look for the following risk factors (factors are numbered alphanumerically to coincide with the type of factor, e.g., "O" for "overt"; "P" for "pricing", etc.):

Overt *indicators of discrimination such as:*

O1. Including explicit prohibited basis identifiers in underwriting criteria or pricing standards.

O2. Collecting information, conducting inquiries or imposing conditions contrary to express requirements of Regulation B.

O3. Including variables in a credit scoring system that constitute a basis or factor prohibited by Regulation B or, for residential loan scoring systems, the FHAct. (If a credit scoring system scores age, refer to the Credit Scoring Analysis section of the **Appendix**.)

O4. Statements made by the institution's officers, employees or agents which constitute an express or implicit indication that one or more such persons have engaged or do engage in discrimination on a prohibited basis in any aspect of a credit transaction.

O5. Employee or institutional statements that evidence attitudes based on prohibited basis prejudices or stereotypes.

Note: For risk factors below that are marked with an asterisk, examiners need not attempt to calculate the indicated ratios for racial or national origin characteristics when the institution in not a HMDA reporter. However, consideration should be given in such cases to whether or not such calculations should be made based on gender or racial-ethnic surrogates.

Indicators of potential ***disparate treatment in Underwriting*** *such as:*

U1. *Substantial disparities among the approval/denial rates for applicants by monitored prohibited basis characteristic (especially within income categories).

U2. *Substantial disparities among the application processing times for applicants by monitored prohibited basis characteristic (especially within denial reason groups).

U3. *Substantially higher proportion of withdrawn/incomplete applications from prohibited basis group applicants than from other applicants.

U4. Vague or unduly subjective underwriting criteria.

U5. Lack of clear guidance on making exceptions to underwriting criteria, including credit scoring overrides.

U6. Lack of clear loan file documentation regarding reasons for any exceptions to normal underwriting standards, including credit scoring overrides.

U7. Relatively high percentages of either exceptions to underwriting criteria or overrides of credit score cutoffs.

U8. Loan officer or broker compensation based on loan volume (especially loans approved per period of time).

U9. Consumer complaints alleging discrimination in loan processing or in approving/denying residential loans.

Indicators of potential ***disparate treatment in Pricing*** *(interest rates, fees, or points) such as:*

P1. Relationship between loan pricing and compensation of loan officers or brokers.

P2. Presence of broad discretion in pricing or other transaction costs.

P3. Use of a system of risk-based pricing that is not empirically based and statistically sound.

P4. *Substantial disparities among prices being quoted or charged to applicants who differ as to their monitored prohibited basis characteristics.

P5. Consumer complaints alleging discrimination in residential loan pricing.

Indicators of potential ***disparate treatment by Steering*** *such as:*

S1. For an institution that has one or more sub-prime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared with the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).

S2. Lack of clear, objective standards for (i) referring applicants to subsidiaries or affiliates, (ii) classifying applicants as "prime" or "subprime" borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants.

S3. For an institution that makes both conventional and FHA mortgages, any significant differences in the percentages of prohibited basis group applicants in each of these two

loan products, particularly with respect to loan amounts of $100,000 or more.

S4. For an institution that makes both prime and sub-prime loans for the same purpose, any significant differences in percentages of prohibited basis group borrowers in each of the alternative loan product categories.

S5. Consumer complaints alleging discrimination in residential loan pricing.

S6. A lender with a sub-prime mortgage company subsidiary or affiliate integrates loan application processing for both entities, such that steering between the prime and sub-prime products can occur almost seamlessly; *i.e.,* a single loan processor could simultaneously attempt to qualify any applicant, whether to the bank or the mortgage company, under either the bank's prime criteria or the mortgage company's sub-prime criteria.

S7. Loan officers have broad discretion regarding whether to promote conventional or FHA loans, or both, to applicants and the lender has not issued guidelines regarding the exercise of this discretion.

S8. A lender has most of its branches in predominantly white neighborhoods. The lender's subprime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

Indicators of potential ***discriminatory Redlining*** *such as:*

R1. *Significant differences, as revealed in HMDA data, in the number of loans originated in those areas in the lender's market that have relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R2. *Significant differences between approval/denial rates for *all* applicants (minority and nonminority) in areas with relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R3. *Significant differences between denial rates based on insufficient collateral for applicants from areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R4. Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.

R5. Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market and having relatively high concentrations of minority residents.

R6. Policies on receipt and processing of applications, pricing, conditions, or appraisals and valuation, or on any other aspect of providing residential credit that vary between areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R7. Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.

R8. Complaints or other allegations by consumers or community representatives that the lender excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the lender filed with their agency; the CRA public comment file; community contact forms; and the responses to questions about redlining, discrimination, and discouragement of applications, and about meeting the needs of racial or national origin minorities, asked as part of "obtaining local perspectives on the performance of financial lenders" during prior CRA examinations.

Note: Broad allegations or complaints are not, by themselves, sufficient justification to shift the focus of an examination from routine comparative review of applications to redlining analysis. Such a shift should be based on complaints or allegations of specific practices or incidents that are consistent with redlining, along with the existence of other risk factors.

R9. A lender that has most of its branches in predominantly white neighborhoods at the same time that the lender's subprime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

Indicators of potential ***disparate treatment in Marketing*** *of residential products, such as:*

M1.Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.

M2.Advertising only in media serving nonminority areas of the market.

M3.Marketing through brokers or other agents that the lender knows (or has reason to know) would serve only one racial or ethnic group in the market.

M4.Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the lenders assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.

M5.Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products ** that:

- Explicitly exclude groups of prospective borrowers on a prohibited basis; or
- Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution's marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area.

***Note:* Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FHAct. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FHAct.

M6.*Proportion of monitored prohibited basis applicants is significantly lower than that group's representation in the total population of the market area.

M7.Consumer complaints alleging discrimination in advertising or marketing loans.

Step Five: Organize and Focus Residential Risk Analysis

Review the risk factors identified in Step 4 and, for each loan product that displays risk factors, articulate the possible discriminatory effects encountered and organize the examination of those loan products in accordance with the following guidance:

- Where **overt** evidence of discrimination, as described in factors O1-O5, has been found in connection with a product, document those findings as described in Part III, A, besides completing the remainder of the planned examination analysis.
- Where any of the risk factors U1-U9 are present, consider conducting an **underwriting comparative file analysis** as described in Part III, B.
- Where any of the risk factors P1-P5 are present, consider conducting a **pricing comparative file analysis** as described in Part III, C.
- Where any of the risk factors S1-S8 are present, consider conducting a **steering analysis** as described in Part III, D.
- Where any of the risk factors R1-R9 are present, consult agency managers about conducting an analysis for **redlining** as described in Part III, F.
- Where any of the risk factors M1-M7 are present, consult agency managers about conducting a **marketing analysis** as described in Part III, G.
- Where an institution uses age in any **credit scoring system**, consider conducting an examination analysis of that credit scoring system's compliance with the requirements of Regulation B as described in Part III, H.

Step Six: Identify Consumer Lending Discrimination Risk Factors

For credit card, motor vehicle, home equity and other consumer loan products selected in Step One for risk analysis in the current examination cycle, conduct a risk factor review similar to that conducted for residential lending products in Steps Three through Five, above. Consult with agency managers regarding the potential use of surrogates to identify possible prohibited basis group individuals.

Note: The term surrogate in this context refers to any factor related to a loan applicant that potentially identifies that applicant's race, color or other prohibited basis characteristic in instances where no direct evidence of that characteristic is available. Thus, in consumer lending, where monitoring data is generally unavailable, an outwardly Hispanic or Asian surname could constitute a surrogate for an applicant's race or national origin because then examiner can assume that the lender (who can rebut the presumption) perceived the person to be Hispanic. Similarly, an applicant's given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis characteristic may be used as to set up a comparative analysis with nonminority applicants or borrowers.

Using decision rules in Steps three through five, above, for residential lending products, articulate the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step Seven: Analyze Commercial Lending Discrimination Risk

Where an institution does a substantial amount of lending in the commercial lending market, most notably small business loans (and the product has not recently been examined or the underwriting standards have changed since the last examination of the product), the examiner should consider conducting a risk factor review similar to that performed for residential lending products, as feasible, given the limited information available. Such an analysis should generally be limited to determining risk potential based on risk factors U4-U8; P1-P3; R4-R7; and M1-M3.

If the institution makes commercial loans insured by the Small Business Administration (SBA), determine from agency supervisory staff whether SBA loan data (which codes race and other factors) are available for the institution and evaluate those data pursuant to instructions accompanying them.

For large institutions reporting small business loans for CRA purposes and where the institution also voluntarily geocodes loan denials, look for material discrepancies in ratios of approval-to-denial rates for applications in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations.

Articulate the possible discriminatory patterns identified and consider further examining those products determined to have sufficient risk of discriminatory conduct in accordance with the procedures for commercial lending described in Part III, F.

Step Eight: Complete the Scoping Process

To complete the scoping process, the examiner should review the results of the preceding steps and select those focal points that warrant examination, based on the relative risk levels identified above. In order to remain within the agency's resource allowances, the examiner may need to choose a smaller number of Focal Points from among all those selected on the basis of risk. In such instances, set the scope by first, prioritizing focal points on the basis of (i) high number and/or relative severity of risk factors; (ii) high data quality and other factors affecting the likelihood of obtaining reliable examination results; (iii) high loan volume and the likelihood of widespread risk to applicants and borrowers; and (iv) low quality of any compliance program and, second, selecting for examination review as many focal points as resources permit.

Where the judgment process among competing Focal Points is a close call, information learned in the phase of conducting the compliance management review can be used to further refine the examiner's choices.

Part II—Compliance Management Review

The Compliance Management Review enables the examination team to determine:

- The intensity of the current examination based on an evaluation of the compliance management measures employed by an institution.
- The reliability of the institution's practices and procedures for ensuring continued fair lending compliance.

Generally, the review should focus on:

- Determining whether the policies and procedures of the institution enable management to prevent, or to identify and self-correct, illegal disparate treatment in the transactions that relate to the products and issues identified for further analysis under Part I of these procedures.
- Obtaining a thorough understanding of the manner by which management addresses its fair lending responsibilities with respect to (a) the institution's lending practices and standards, (b) training and other application-processing aids, (c) guidance to employees or agents in dealing with customers, and (d) its marketing or other promotion of products and services.

To conduct this review, examiners should consider institutional records and interviews with appropriate management personnel in the lending, compliance, audit, and legal functions. The examiner should also refer to the **Compliance Management Analysis Checklist** contained in the **Appendix** to evaluate the strength of the compliance programs in terms of their capacity to prevent, or to identify and self-correct, fair lending violations in connection with the products or issues selected for analysis. Based on this evaluation:

- Set the intensity of the transaction analysis by minimizing sample sizes within the guidelines established in Part III and the **Sample Size Table** in the **Appendix**, to the extent warranted by the strength and thoroughness of the compliance programs applicable to those Focal Points selected for examination.
- Identify any compliance program or system deficiencies that merit correction or improvement and present these to management in accordance with Part IV of these procedures.

Where an institution performs a self-evaluation or has voluntarily disclosed the report or results of a self-test of any product or issue that is within the scope of the examination and has been selected for analysis pursuant to Part I of these procedures, examiners may streamline the examination, consistent with agency instructions, provided the self-test or self-evaluation meets the requirements set forth in **Streamlining the Examination** located in the **Appendix**.

Part III—Examination Procedures

Once the scope and intensity of the examination have been determined, assess the institution's fair lending performance by applying the appropriate procedures that follow to each of the examination Focal Points already selected.

A. Documenting Overt Evidence of Disparate Treatment

Where the scoping process or any other source identifies overt evidence of disparate treatment, the examiner should assess the nature of the policy or statement and the extent of its impact on affected applicants by conducting the following analysis:

Step 1. Where the indicator(s) of overt discrimination are found in or based on a written policy (for example, a credit scorecard) or communication, determine and document:

a. The precise language of the apparently discriminatory policy or communication and the nature of the fair lending concerns that it raises.

b. The lender's stated purpose in adopting the policy or communication and the identity of the person on whose authority it was issued or adopted.
c. How and when the policy or communication was put into effect.
d. How widely the policy or communication was applied.
e. Whether and to what extent applicants were adversely affected by the policy or communication.

Step 2. Where any indicator of overt discrimination was an oral statement or unwritten practice, determine and document:

a. The precise nature of both the statement or practice and of the fair lending concerns that they raise.
b. The identity of the persons making the statement or applying the practice and their descriptions of the reasons for it and the persons authorizing or directing the use of the statement or practice.
c. How and when the statement or practice was disseminated or put into effect.
d. How widely the statement or practice was disseminated or applied.
e. Whether and to what extent applicants were adversely affected by the statement or practice.

Assemble findings and supporting documentation for presentation to management in connection with Part IV of these procedures.

B. Transactional Underwriting Analysis—Residential and Consumer Loans.

Step 1. Set Sample Size

a. For each Focal Point selected for this analysis, two samples will be utilized: (i) prohibited basis group denials and (ii) control group approvals, both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer applications.
b. Refer to the **Fair Lending Sample Size Table A** in the **Appendix** and determine the size of the initial sample for each Focal Point, based on the number of prohibited basis group denials and the number of control group approvals by the lender during the twelve month (or calendar year) period of lending activity preceding the examination. In the event that the number of denials and/or approvals acted on during the preceding 12 month period substantially exceeds the maximum sample size shown in Table A, reduce the time period from which that sample is selected to a shorter period. (In doing so, make every effort to select a period in which the lender's underwriting standards are most representative of those in effect during the full 12 month period preceding the examination.)
c. If the number of prohibited basis group denials or control group approvals for a given Focal Point that were acted upon during the 12 month period referenced in 1.b., above, do not meet the minimum standards set forth in the Sample Size Table, examiners need not attempt a transactional analysis for that Focal Point. Where other risk factors favor analyzing such a Focal Point, consult with agency managers on possible alternative methods of judgmental comparative analysis.
d. If agency policy calls for a different approach to sampling (e.g., a form of statistical analysis or a mathematical formula) for a limited class of institutions, examiners should follow that approach.

Step 2. Determine Sample Composition.

a. To the extent the institution maintains records of loan outcomes resulting from exceptions to its credit underwriting standards or other policies (e.g., overrides to credit score cutoffs), request such records for both approvals and denials, sorted by loan product and branch or decision center, if the lender can do so. Include in the initial sample for each Focal Point all exceptions or overrides applicable to that Focal Point.
b. Using HMDA/LAR data or, for consumer loans, comparable loan register data to the extent available, choose approved and denied applications based on selection criteria that will maximize the likelihood of finding marginal approved and denied applicants, as discussed below.
c. To the extent that the above factors are inapplicable or other selection criteria are unavailable or do not facilitate selection of the entire sample size of files, complete the initial sample selection by making random file selections from the appropriate sample categories in the Sample Size Table.

Step 3. Compare Approved and Denied Applications

Overview: Although a creditor's written policies and procedures may appear to be nondiscriminatory, lending personnel may interpret or apply policies in a discriminatory manner. In order to detect any disparate treatment among applicants, the examiner should first eliminate all but "**marginal transactions**" (*see* 3.b. below) from each selected Focal Point sample. Then, a detailed profile of each marginal applicant's qualifications, the level of assistance received during the application process, the reasons for denial, the loan terms, and other information should be recorded on an Applicant Profile Spreadsheet. Once profiled, the examiner can compare the target and control groups for evidence that similarly qualified applicants have been treated differently

as to either the institution's credit decision or the quality of assistance provided.

a. Create Applicant Profile Spreadsheet

Based upon the lender's written and/or articulated credit standards and loan policies, identify categories of data that should be recorded for each applicant and provide a field for each of these categories on a worksheet or computerized spreadsheet. Certain data (income, loan amount, debt, etc.) should always be included in the spreadsheet, while the other data selected will be tailored for each loan product and lender based on applicable underwriting criteria and such issues as branch location and underwriter. Where credit bureau scores and/or application scores are an element of the lender's underwriting criteria (or where such information is regularly recorded in loan files, whether expressly used or not), include a data field for this information in the spread sheet.

In order to facilitate comparisons of the quality of assistance provided to target and control group applicants, respectively, every work sheet should provide a "comments" block appropriately labeled as the site for recording observations from the file or interviews regarding how an applicant was, or was not, assisted in overcoming credit deficiencies or otherwise qualifying for approval.

b. Complete Applicant Profiles

From the application files sample for each Focal Point, complete applicant profiles for selected denied and approved applications as follows:

- A principal goal is to identify cases where similarly qualified prohibited basis and control group applicants had different credit outcomes, because the agencies have found that discrimination, including differences in granting assistance during the approval process, is more likely to occur with respect to applicants who are not either clearly qualified or unqualified, i.e., "**marginal**" applicants. The examiner-in-charge should, during the following steps, **judgmentally select** from the initial sample only those denied and approved applications which constitute marginal transactions. (*See* **Appendix** on **Marginal Transactions** for guidance)
- If few marginal control group applicants are identified from the **initial sample**, review additional files of approved control group applicants. This will either increase the number of marginal approvals or confirm that marginal approvals are so infrequent that the marginal denials are unlikely to involve disparate treatment.
- The judgmental selection of both **marginal-denied** and **marginal-approved** applicant loan files should be done together, in a "back and forth" manner, to facilitate close matches and a more consistent definition of "marginal" between these two types of loan files.
- Once the marginal files have been identified, the data elements called for on the profile spreadsheet are extracted or noted and entered.
- While conducting the preceding step, the examiner should simultaneously look for and document on the spreadsheet any evidence found in marginal files regarding the following:
  - **the extent of any assistance**, including both affirmative aid and **waivers** or partial waivers of credit policy provisions or requirements, that appears to have been provided to **marginal-approved** control group applicants which enabled them to overcome one or more credit deficiencies, such as excessive debt-to-income ratios; and
  - the extent to which **marginal-denied** target group applicants with similar deficiencies were, or were not, provided similar affirmative aid, waivers or other forms of assistance.

c. Review and Compare Profiles

- For each Focal Point, review all **marginal profiles** to determine if the underwriter followed institution lending policies in denying applications and whether the reason(s) for denial were supported by facts documented in the loan file and properly disclosed to the applicant pursuant to Regulation B. If any (a) unexplained deviations from credit standards, (b) inaccurate reasons for denial or (c) incorrect disclosures are noted, (whether in a judgmental underwriting system, a scored system or a mixed system) the examiner should obtain an explanation from the underwriter and document the response on an appropriate workpaper.

  Note: In constructing the applicant profiles to be compared, examiners must adjust the facts compared so that assistance, waivers, or acts of discretion are treated consistently between applicants. For example, if a control group applicant's DTI ratio was lowered to 42% because the lender decided to include short-term overtime income, and a prohibited basis group applicant who was denied due to "insufficient income" would have had his ratio drop from 46% to 41% if his short-term overtime income had been considered, then the examiners should consider 41%, not 46%, in determining the benchmark.

- For each **reason for denial** identified within the target group, rank the denied prohibited basis applicants, beginning with the applicant whose qualification(s) related to that reason for denial were **least deficient**. (The top-ranked denied applicant in each such

ranking will be referred to below as the "**benchmark**" applicant.)

- Compare each marginal control group approval to the **benchmark** applicant in each reason-for-denial ranking developed in step (b), above. If there are no approvals who are equally or less qualified, then there are no instances of disparate treatment for the lender to account for. For all such approvals that appear no better qualified than the denied benchmark applicant
  - identify the approved loan on the worksheet or spreadsheet as an "**overlap approval**", and
  - compare that overlap approval with other marginal prohibited basis denials in the ranking to determine whether additional overlaps exist. If so, identify all overlapping approvals and denials as above.
- Where the Focal Point involves use of a credit scoring system, the analysis for disparate treatment is similar to the procedures set forth in (c) above, and should focus primarily on overrides of the scoring system itself. For guidance on this type of analysis, refer to **Part C** of the **Credit Scoring** section of the **Appendix**.

Step 4. If there is some evidence of violations in the underwriting process, but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.

Step 5. Discuss all findings resulting from the above comparisons with bank management and document both the findings and all conversations on an appropriate worksheet.

C. Analyzing Potential Disparities in Terms and Conditions.

Step 1. Set Sample Size

For each Focal Point selected for this analysis, two samples will be utilized: (i) prohibited basis group approvals and (ii) control group approvals, both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer or commercial applications. Refer to the **Fair Lending Sample Size Table B** in the **Appendix** and determine the size of the initial sample for each Focal Point, based on the number of prohibited basis group approvals and the number of control group approvals received by the lender during the 12 months preceding the examination and the outcome of the compliance management system analysis conducted in Part II.

Step 2. Determine Sample Composition.

Note: Sample composition for a comparison of price and other terms and conditions will initially focus on controlling for two nondiscriminatory variables that can have a significant impact on loan terms: whether the loan was sold and the loan closing date. Other variables, such as household income and loan amount, will be accounted for on a case-by-case basis during the file comparison process.

a. Disposition of Loan

   Determine whether approved loans from which the sample is to be drawn have been consistently sold to the secondary market or held in portfolio. If both, determine the proportion for each category and use that proportion in selecting loans from each category for the sample. If the number of loans in either the sold or portfolio categories is too small to complete the minimum proportional sample size for that category, ignore loans in that category and complete the sample using loans solely from the larger category.

b. Period of Review

   Sort loans selected in (1), above, by **date of loan closing** and match batches of prohibited basis and control group loans that closed either on the same date or within a **range of dates** during which the lender's pricing policies were the same. If dates of loan closing are not consistently available, consider substituting the application date for the closing date.

Step 3. Create Applicant Profile Spreadsheet

Identify data that should be recorded for each loan to allow for a valid comparison regarding terms and conditions and place these onto a spreadsheet. Certain data must always be included in the spreadsheet, while the other data selected will be tailored for each loan product and lender based on loan terms offered and such issues as branch location and underwriter.

Step 4. Review Terms and Conditions; Compare with Applicant Outcomes

a. Determine which loan terms and conditions (rates, points, fees, maturity variations, LTVs, collateral requirements, etc.) are left, in whole or in part, to the discretion of loan officers or underwriters. For each such term or condition, identify (a) any **approved prohibited basis group applicants** in the sample who appear to have been treated unfavorably with respect to that term or condition and (b) any **approved control group applicants** who appear to have been treated favorably with respect to that term or condition. The examiner's analysis should be thoroughly documented in the workpapers.

b. Identify from the sample any **approved control group applicant(s)** who appear to have been treated more favorably than one or more of the above-identified prohibited basis group applicants and who have negative creditworthiness factors (under the lender's standards)

that are equal to or worse than the prohibited basis group applicant(s).

c. Obtain explanations from the appropriate loan officer or other employee for any differences that exist and reanalyze the sample for evidence of discrimination.

d. If there is some evidence of violations in the imposition of terms and conditions but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.

e. Discuss differences in comparable loans with the institution's management and document all conversations on an appropriate worksheet. For additional guidance on evaluating management's responses, refer to the **Part A, 1-6 Evaluating Response to Evidence of Disparate Treatment** in the **Appendix**.

D. Steering Analysis

Institutions that make FHA as well as conventional loans and those that lend in both prime or "A" markets and in sub-prime markets (either directly or through subsidiaries or affiliates), present opportunities for loan officers to refer or "steer" applicants from one product or market to another. Steering is not unlawful *per se* and, in many instances, the availability of a more expensive form of credit may enable an applicant with credit problems to obtain a loan that might otherwise be unavailable. Steering can, however, raise fair lending issues if it occurs differently and less advantageously for prohibited basis group applicants than for similarly-situated non-minority applicants. If the scoping analysis reveals the presence of one or more risk factors S1 through S8 for any selected Focal Point, consult with managers about conducting a steering analysis as described below.

From the perspective of fair lending analysis, all steering scenarios involve a **decision** by the lender's personnel to guide an applicant's choice between a **more favorable** loan and one or more **less favorable** alternatives (e.g., referral to a more expensive subprime mortgage subsidiary). As such, a steering analysis should be focused on answering the following questions:

Step 1. Clarify which of the options available to customers are the more favorable and less favorable.

Through interviews with appropriate personnel of the institution and review of policy manuals, procedure guidelines and other directives, obtain and verify the following information for each product-alternative product pairing or grouping identified above:

a. All underwriting criteria for the product and for the alternative product(s) that are offered by the institution or by a subsidiary or affiliate.

b. Pricing or other costs applicable to the product and the alternative product(s), including interest rates, points, and all fees.

Step 2. Document the policies, conditions or criteria that have been adopted by the lender for determining how referrals are to be made and choices presented to customers.

a. Obtain not only information regarding the product offered by the lender and alternative products offered by subsidiaries/affiliates, but also information on products and alternatives offered solely by the lender itself-, e.g., conventional and FHA, secured and unsecured home improvement loans, prime and subprime mortgages.

b. Obtain any information regarding a subsidiary of the lender directly from that entity, but seek information regarding an affiliate or holding company subsidiary only from the lender itself.

c. Obtain all appropriate documentation and document all discussions with loan personnel and managers.

d. Obtain documentation and/or employee estimates as to the volume of referrals made from or to the institution, for each product, during a relevant time period.

e. Resolve to the extent possible any discrepancies between information found in the lender's documents and information obtained in interviews by conducting appropriate follow-up interviews.

f. Identify any policies and procedures established by the institution and/or the subsidiary or affiliate for (i) referring a person who applies to the institution, but does not meet its criteria, to a subsidiary or affiliate; (ii) offering to a person who applies to the institution for a *specific product*, but does not meet its criteria, one or more alternative loan products; or (iii) referring a person who applies to a subsidiary or affiliate for its product, but who appears be qualified for a loan from the institution, to the institution.

g. Determine whether loan personnel are encouraged, through monetary incentives or otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice versa.

Step 3. Determine how both the decisions and the lender's policies, conditions or criteria are supposed to be documented in loan files, policy manuals, directives, etc.

Determine how, if at all, a referral from the institution to a subsidiary/affiliate, or vice versa, *and the reason for it*, would be documented in the loan files or in any other records of either the referring or receiving entity.

Step 4. Determine to what extent individual loan personnel are able to exercise personal discretion in deciding what loan products or other credit alternatives will be made available to a given applicant.

Step 5. Determine whether the lender's stated policies, conditions or criteria in fact are adhered to by individual decision makers. In the alternative, does it appear that different policies or practices are actually in effect?

Enter data from the prohibited basis group sample on the spread sheets and determine whether the lender is, in fact, applying its criteria as stated. For example, if one announced criterion for receiving a "more favorable" prime mortgage loan was a back end debt ratio of no more than 38%, review the spread sheets to determine whether that criteria was adhered to. If the lender's actual treatment of prohibited basis group applicants appears to differ from its stated criteria, document such differences for subsequent discussion with management.

Step 6. To the extent that individual loan personnel have any discretion in deciding what credit alternatives (e.g., conventional vs. FHA/VA) to offer applicants, conduct a comparative analysis to determine whether that discretion has been exercised in a nondiscriminatory manner.

Compare the lender's or subsidiary/affiliate's treatment of control group and prohibited basis group applicants by adapting the "benchmark" and "overlap" technique discussed in Part III, B. of these procedures. For purposes of this Steering Analysis, that technique should be conducted as follows:

a. For each Focal Point to be analyzed, select a sample of prohibited basis group applicants who received "less favorable" treatment (e.g., referral to a finance company or a subprime mortgage subsidiary or counteroffers of less favorable product alternatives).

   Note: In selecting the sample, follow the guidance of **Sample Size Table B** in the **Appendix** and select "marginal applicants" as instructed in Part III, Section B, above.

b. Prepare a spread sheet for the sample which contains data entry categories for those underwriting and/or referral criteria that the lender identified in Step 1. b as used in reaching underwriting and referral decisions between the pairs of products.
c. Review the "less favorably" treated prohibited basis group sample and rank this sample from least qualified to most qualified.
d. From the sample, identify the **best qualified** prohibited basis group applicant, based on the criteria identified for the control group, above. This applicant will be the "**benchmark**" applicant. Rank order the remaining applicants from best to least qualified.
e. Select a sample of *control group applicants*. Identify those who were treated "*more favorably*" with respect to the same product-alternative product pair as the *prohibited basis group*. (Again refer to the Sample Size Table B and marginal applicant processes noted above in selecting the sample.)
f. Compare the qualifications of the benchmark applicant with those of the control group applicants, beginning with the least qualified member of that sample. Any control group applicant who appears less qualified than the benchmark applicant should be identified on the spreadsheet as a "**control group overlap**".
g. Compare all control group overlaps with other, less qualified prohibited basis group applicants to determine whether additional overlaps exist.
h. Document all overlaps as possible disparities in treatment. Discuss all overlaps and related findings (e.g., any differences between stated and actual underwriting criteria) with management, documenting all such conversations.

E. Transactional Underwriting Analysis—Commercial Loans.

Overview: Unlike consumer credit, where loan products and prices are generally homogenous and underwriting involves the evaluation of a limited number of credit variables, commercial loans are generally unique and underwriting methods and loan pricing may vary depending on a large number of credit variables. The additional credit analysis that is involved in underwriting commercial credit products will entail additional complexity in the sampling and discrimination analysis process. Although ECOA prohibits discrimination as to all commercial credit activities of a covered institution, the agencies recognize that small businesses (sole proprietorships, partnerships, and small, closely-held corporations), including those operated by prohibited basis group members, may have less experience in borrowing. Therefore, in implementing these procedures, examinations should generally be focused on small business credit (commercial applicants that had gross revenues of $1,000,000 or less in the preceding fiscal year), absent some evidence that a focus on other commercial products would be more appropriate.

Step 1. Understand Commercial Loan Policies

For the commercial product line selected for analysis, the examiner should first review credit policy guidelines and interview appropriate commercial loan managers and officers to obtain written and articulated standards used by the lender in evaluating commercial loan applications.

Step 2. Conduct Initial Sampling

a. Select all (up to a maximum of ten) denied applications that were acted on during the three month period prior to the examination. To the extent feasible, include denied

applications from businesses that are (i) located in minority and/or integrated geographies or (ii) appear to be owned by women or minority group members, based on the names of the principals shown on applications or related documents. (In the case of banks that do a significant volume of commercial lending, consider reviewing more than ten applications.)

b. For each of the **denied commercial applications *selected***, record specific information from loan files and through interviews with the appropriate loan officer(s), about the principal owners, the purpose of the loan, and the specific, pertinent financial information about the commercial enterprise (including type of business—retail, manufacturing, service, etc.), that was used by the lender to evaluate the credit request. In addition, inquire with the loan officer as to the gender and race, if known, of the principals of the business.

c. Select ten approved loans that appear to be similar with regard to business type, purpose of loan, loan amount, loan terms, and type of collateral, as the denied loans sampled. For example, if the denied loan sample includes applications for lines of credit to cover inventory purchases for retail businesses, the examiner should select approved applications for lines of credit from retail businesses.

d. For each approved commercial loan application selected, obtain and record information parallel to that obtained for denied applications, including the gender and race of the principals.

e. The examiner should first compare the **credit criteria** considered in the credit process for each of the approved and denied applications to established underwriting standards, rather than comparing files directly.

f. The examiner should identify any deviations from credit standards for both approved and denied credit requests, and differences in loan terms granted for approved credit requests.

g. The examiner should discuss each instance where deviations from credit standards and terms were noted, but were not explained in the file, with the commercial credit underwriter. Each discussion should be documented.

Step 3. Conduct Targeted Sampling.

a. If deviations from credit standards or pricing are not sufficiently explained by other factors either documented in the credit file or the commercial underwriter was not able to provide a reasonable explanation, the examiner should determine if deviations were detrimental to any protected classes of applicants.

b. The examiner should consider employing the same techniques for determining race and gender characteristics of commercial applicants as those outlined in the consumer loan sampling procedures.

c. If it is determined that there are members of one or more prohibited basis groups among commercial credit requests that were not underwritten according to established standards or received less favorable terms, the examiner should select additional commercial loans, where applicants are members of the same prohibited basis group and select similarly situated control group credit requests. These additional files should be selected based on the specific applicant circumstance(s) that appeared to have been viewed differently by lending personnel on a prohibited basis.

d. If there are not enough similarly situated applicants for comparison in the original sample period to draw a reasonable conclusion, the examiner should expand the sample period. The expanded sample period should generally not go beyond the date of the prior examination.

Sampling Guidelines

a. Generally, the task of selecting an appropriate expanded sample of prohibited basis and control group applications for commercial loans will require examiner judgement. The examiner should select a sample that is large enough to be able to draw a reasonable conclusion.

b. The examiner should first select from the applications that were acted on during the initial sample period, but were not included in the initial sample, and select applications from prior time periods as necessary.

c. The expanded sample should include both approved and denied, prohibited basis and control group applications, where similar credit was requested by similar enterprises for similar purposes.

F. Analysis of Potential Discriminatory "Redlining"

Overview: For purposes of this analysis, "redlining" is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.

The redlining analysis may be applied to determine whether, on a prohibited basis:

- a lender fails or refuses to extend credit in such an area;
- makes loans in such an area but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- a lender omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

This guidance focuses on possible discrimination against racial or national origin minorities. The same analysis could

be adapted to evaluate relative access to credit for areas of geographical concentration on other prohibited bases—for example, age.

Note: It is true that neither the Equal Credit Opportunity Act (ECOA) nor the Fair Housing Act (FHAct) specifically uses the term "redlining." However, federal courts as well as agencies that have enforcement responsibilities for the FHAct, have interpreted it as prohibiting lenders from having different marketing or lending practices for certain geographic areas, compared to others, where the purpose or effect of such differences would be to discriminate on a prohibited basis. Similarly, the ECOA would prohibit treating applicants for credit differently on the basis of differences in the racial or ethnic composition of their respective neighborhoods.

Like other forms of disparate treatment, redlining can be proven by overt or comparative evidence. If any written or oral policy or statement of the lender (*see* risk factors R5, R6, and R7 in Part I, above) suggests that the lender links the racial or national origin character of an area with any aspect of access to or terms of credit, the examiners should refer to the guidance in section A of this Part III, on documenting and evaluating overt evidence of discrimination.

Overt evidence includes not only explicit statements, but also any geographical terms used by the lender that would, to a reasonable person familiar with the community in question, connote a specific racial or national origin character. For example, if the principal information conveyed by the phrase "north of 110th Street" is that the indicated area is principally occupied by Hispanics, then a policy of not making credit available "north of 110th Street" is overt evidence of potential redlining on the basis of national origin.

Overt evidence is relatively uncommon. Consequently, the redlining analysis usually will focus on comparative evidence (similar to analyses of possible disparate treatment of individual customers) in which the lender's treatment of areas with contrasting racial or national origin characters is compared.

When the scoping process (including consultation within an agency as called for by agency procedures) indicates that a redlining analysis should be initiated, examiners should complete the following steps of comparative analysis:

1. Identify and delineate any areas within the lender's CRA assessment area or market area for residential products that are of a racial or national origin minority character;
2. Determine whether any minority area identified in step 1 appears to be excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the lender;
3. Identify and delineate any areas within the lender's CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably;
4. Obtain the lender's explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable; and
5. Obtain and evaluate other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination.

These steps are discussed in detail below.

Using information obtained during scoping

Although the five tasks listed are presented below as examination steps in the order given above, examiners should recognize that a different order may be preferable in any given examination. For example, the lender's explanation (step 4) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (step 2) and the CRA examiners may already have verified it, which may be sufficient for purposes of the redlining analysis.

As another example, as part of the scoping process, the examiners may have reviewed an analysis of the geographic distribution of the lender's loan originations with respect to the racial and national origin composition of census tracts within its CRA assessment or residential market area. Such analysis might have documented the existence of significant discrepancies between areas, by degree of minority concentration, in loans originated (risk factor R1), approval/denial rates (risk factor R2) and/or rates of denials because of insufficient collateral (risk factor R3). In such a situation in which the scoping process has produced a reliable factual record, the examiners could begin with step 4 (obtaining an explanation) of the redlining analysis below.

In contrast, when the scoping process only yields partial or questionable information, or when the risk factors on which the redlining analysis is based are complaints or allegations against the lender, steps 1, 2, and/or 3 must be addressed.

Comparative analysis for redlining

Step 1. Identify and delineate any areas within the lender's CRA assessment area or market area for residential products that are of a racial or national origin minority character.

Note: The CRA assessment area can be a convenient unit for redlining analysis because information about it typically already is in hand. However, the CRA assessment area may be too limited. The redlining analysis focuses on the lender's decisions about how much access to credit to provide to different geographical areas. The areas for which those

decisions can best be compared are areas where the lender actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit. Some of those areas might be beyond or otherwise different from the CRA assessment area.

If there are no areas identifiable for their racial or national origin minority character within the lender's CRA assessment area or market area for residential products, a redlining analysis is not appropriate. (If there is a substantial but *dispersed* minority population, potential disparate treatment can be evaluated by a routine comparative file review of applicants.)

This step may have been substantially completed during scoping, but unresolved matters may remain. (For example, several community spokespersons may allege that the lender is redlining, but disagree in defining the area). The examiners should:

a. Describe as precisely as possible why a specific area is recognized in the community (perceptions of residents, etc.) and/or is objectively identifiable (based on census or other data) as having a particular racial or national origin minority character.
   - The most obvious identifier is the predominant race or national origin of the residents of the area. Examiners should document the percentages of racial or national origin minorities residing within the census tracts that make up the area. However, they should bear in mind that it is illegal for the lender to consider a prohibited factor *in any way*. For example, an area might be only 20% black, but if a lender refuses to extend credit there because the lender believes the area is "changing to black," that too is a violation. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character.
   - Geographical groupings that are convenient for CRA may obscure racial patterns. For example, an underserved, low-income, predominantly minority neighborhood that lies within a larger low-income area that primarily consisted of *non*minority neighborhoods may seem adequately served when the entire low-income area is analyzed as a unit. However, a racial pattern of underservice to minority areas might be revealed if the low-income minority neighborhood shared a border with an underserved, *middle*-income, minority area and those two minority areas were grouped together for purposes of analysis. Review the analysis from prior CRA examinations of whether the assessment area appears to have been influenced by prohibited factors. If there are minority areas that the lender excluded from the assessment area improperly, consider whether they ought to be included in the redlining analysis.

b. Describe how the racial or national origin character changes across the suspected redlining area's various boundaries.

c. Document or estimate the amount, within the minority area, of types of housing for which the lender offers residential credit. If the minority area does not have a significant amount of such housing, the area is not appropriate for a redlining analysis.

Step 2. Determine whether any minority area identified in step 1 is excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the lender.

The examiners should begin with the risk factors identified during the scoping process. The unfavorable treatment may have been substantially documented during scoping and needs only to be finished in this step. If not, this step will verify and measure the extent to which HMDA data show the minority areas identified in Step 1 to be underserved and/or how the lender's explicit policies treat them less favorably.

a. Review prior CRA lending test analyses to learn whether they have identified any excluded or otherwise under-served areas or other significant geographical disparities in the institution's lending. Determine whether any of those are the minority areas identified in Step 1.

b. Learn from the lender itself whether, as a matter of policy, it treats any separate or distinct geographical areas within its marketing or service area differently from other areas. This may have been done completely or partially during scoping analysis related to risk factors R5, R6, and R7. The differences in treatment can be in marketing, branch operations, appraisal practices, application processing, approval requirements, pricing, loan conditions, evaluation of collateral, or any other policy or practice materially related to access to credit. Determine whether any of those less-favored areas are the minority areas identified in step 1.

c. Obtain from the lender: (i) its reasons for such differences in policy, (ii) how the differences are implemented, and (iii) any specific conditions that must exist in an area for it to receive the particular treatment (more favorable or less favorable) that the lender has indicated.

Step 3. Identify and delineate any areas within the lender's CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably.

To the extent not already completed during scoping:

a. Document the percentages of whites and of racial or national origin minorities residing within the census tract(s) that comprise(s) the *non*minority area.

b. Document the nature of the housing stock in the area.

c. Describe, to the extent known, how the lender's practices, policies, or its rate of lending change from less- to more-favorable as one leaves the minority area at its various boundaries (Examiners should be particularly attentive to instances in which the boundaries between favored and disfavored areas deviate from boundaries the lender would reasonably be expected to follow, such as political boundaries or transportation barriers).

d. Examiners should particularly consider whether, within a large area that is composed predominantly of racial or national origin minority households, there are enclaves that are predominantly *non*minority or whether, along the area's borders, there are irregularities where the *non*minority group is predominant. As part of the overall comparison, examiners should determine whether credit access within those small *non*minority areas differs from credit access in the larger minority area.

Step 4. Obtain the lender's explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable.

This step completes the comparative analysis by soliciting from the lender any additional information not yet considered by the examiners that might show that there is a nondiscriminatory explanation for the apparent disparate treatment based on race or ethnicity.

For each matter that requires explanation, provide the lender full information about what differences appear to exist in how it treats minority and nonminority areas, and how the examiners reached their preliminary conclusions at this stage of the analysis.

a. Evaluate whether the conditions identified by the lender in step 2 as justifying *more* favorable treatment pursuant to institutional *policy* existed in minority neighborhoods that did *not* receive the favorable treatment called for by institutional policy. If there are minority areas for which those conditions existed, ask the lender to explain why the areas were treated differently despite the similar conditions.

b. Evaluate whether the conditions identified by the lender in Step 2 as justifying *less* favorable treatment pursuant to institutional *policy* existed in *non*minority neighborhoods that received favorable treatment nevertheless. If there are *non*minority areas for which those conditions existed, ask the lender to explain why those areas were treated differently, despite the similar conditions.

c. Obtain explanations from the lender for any apparent differences in treatment observed by the examiners but not called for by the lender's policies.

   - If the lender's explanation cites any specific conditions in the nonminority area(s) to justify more favorable treatment, determine whether the minority area(s) identified in step 1 satisfied those conditions. If there are minority areas for which those conditions existed, ask the lender to explain why the areas were treated differently despite the similar conditions.
   - If the lender's explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the nonminority area(s) had those conditions. If there are *non*minority areas for which those conditions existed, ask the lender to explain why those areas were treated differently, despite the similar conditions.

d. Evaluate the lender's responses by applying appropriate principles selected from the **Appendix** on **Evaluating Responses to Evidence of Disparate Treatment**.

Step 5. Obtain and evaluate specific types of other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination.

As a legal matter, discriminatory intent can be inferred simply from the lack of a legitimate explanation for clearly less-favorable treatment of racial or national origin minorities. That might be the situation after step 4. Nevertheless, if the lender's explanations do not adequately account for a documented difference in treatment, the examiners should consider additional information that might support or contradict the interpretation that the difference in treatment was intended.

a. **Comparative file review**. If there was a comparative file review conducted in conjunction with the redlining examination, review the results; or, if it is necessary and feasible to do so to clarify what appears to be discriminatory redlining, compare denied applications from within the suspected redlining area to approved applications from the contrasting area.

   - Learn whether there were any denials of fully qualified applicants from the suspected redlining area. If so, that tends to support the view that the lender wanted to avoid doing business in the area.
   - Learn whether the file review identified instances of illegal disparate treatment against applicants of the same race or national origin as the suspected redlining area. If so, that tends to support the view that the lender wanted to avoid doing business with applicants of that group, such as the residents of the suspected redlining area. Learn whether any such identified victims applied for transactions in the suspected redlining area.

- If there are instances of either of the above, identify denied *non*minority residents, if any, of the suspected redlining area and review their application files to learn whether they appear to have been treated in an irregular or less favorable way. If so, that tends to support the view that the character of the area rather than of the applicants themselves appears to have influenced the credit decisions.
- Review withdrawn and incomplete applications for the suspected redlining area, if those can readily be identified from the HMDA-LAR, and learn whether there are reliable indications that the lender discouraged those applicants from applying. If so, that tends to support the view that the lender did not want to do business in the area and may constitute evidence of a violation of Section 202.5(a) of Regulation B.

Conversely, if the comparisons of individual transactions show that the lender treated minority and nonminority applicants within and outside the suspected redlining area similarly, that tends to contradict the conclusion that the lender avoided the areas because it had minority residents.

b. Interviews of third parties. The perspectives of third parties will have been taken into account to some degree through the review of available materials during scoping. Later in the examination, in appropriate circumstances, information from third parties may help in interpreting whether the lender's apparent differences in treatment of minority and nonminority areas were intended.

- Identify persons (such as housing or credit counselors, home improvement contractors, or real estate and mortgage brokers) who may have extensive experience dealing with credit applicants from the suspected redlined area.
- After obtaining appropriate authorization and guidance from your agency, interview those persons to learn of their *first-hand experiences* related to:
  - oral statements or written indications by a lender's representatives that loan applications from a suspected redlined area were discouraged;
  - whether the lender treated applicants from the suspected redlining area as called for in its own procedures (as the examiners understand them) and/or whether it treated them similarly to applicants from nonminority areas (as the examiners are familiar with those transactions);
  - any unusual delays or irregularities in loan processing for transactions in the suspected redlining area;
  - differences in the lender's pricing, loan conditions, property valuation practices, etc., in the suspected redlining area compared to contrasting areas.

Also, learn from the third parties the names of any consumers they described as having experienced the questionable behavior recounted by the third party, and consider contacting those consumers.

If third parties witnessed specific conduct by the lender that indicates the lender wanted to avoid business from the area or prohibited basis group in question, this would tend to support interpreting the difference in treatment as intended. Conversely, if third parties report proper treatment or positive actions toward such area or prohibited basis group, this would tend to contradict the view that the lender intended to discriminate.

c. Marketing. A clear exclusion of the suspected redlining area from the lender's marketing of residential loan products supports the view that the lender did not want to do business in the area. Marketing decisions are affirmative acts to include or exclude areas. Disparities in marketing between two areas may reveal that the lender prefers one to the other. If sufficiently stark and supported by other evidence, a difference in marketing to racially different areas could itself be treated as a redlining violation of the Fair Housing Act. Even below that level of difference, marketing patterns can support or contradict the view that disparities in lending practices were intentional.

- Review materials that show how the lender has marketed in the suspected redlined area and in nonminority areas. Begin with available CRA materials and discuss the issues with CRA examiners, then review other materials as appropriate. The materials may include, for example, the lender's guidance for the geographical distribution of pre-approved solicitations for credit cards or home equity lines of credit, advertisements in local media or business or telephone directories, business development calls to real estate brokers, and calls by telemarketers.

d. **Peer performance**. Market share analysis and other comparisons to competitors are insufficient by themselves to prove that a lender engaged in illegal redlining. By the same token, a lender cannot justify its own failure to market or lend in an area by citing other lenders' failures to lend or market there.

However, a lender's inactivity in an underserved area where its acknowledged competitors are active would tend to support the interpretation that it intends to avoid doing business in the area. Conversely, if it is as active as other lenders, that would suggest that it intends to compete for, rather than avoid, business in the area.

- Develop a list of the institution's competitors.
- Learn the level of lending in the suspected redlining area by competitors. Check any public evaluations of similarly situated competitors obtained by the CRA

examiners as part of evaluating the performance context or obtain such evaluations independently.

e. **Institution's record**. Request from the lender information about its overall record of serving or attempting to serve the racial or national origin minority group with which the suspected redlining area is identified. The record may reveal an intent to serve that group that tends to contradict the view that the lender intends to discriminate against the group.

Step 6. For any information that supports interpreting the situation as illegal discrimination, obtain and evaluate an explanation from the institution as called for in Part IV.

Note: If the lender's explanation is that the disparate results are the consequence of a specific, neutral policy or practice that the lender applies broadly, such as not making loans on homes below a certain value, review the guidance in the Appendix on Disproportionate Adverse Impact and consult agency managers.

G. Analysis of Potential Discriminatory Marketing Practices.

When scoping identifies significant risk factors (M1-M7) related to marketing, examiners should consult their managers and experts about a possible marketing discrimination analysis. If the managers agree to proceed, the examiners should collect information as follows:

Step 1. Identify the bank's marketing initiatives.

a. Pre-approved solicitations
- Determine whether the bank sends out pre-approved solicitations:
  - for home purchase loans,
  - for home improvement loans, and
  - for refinance loans.
- Determine how the bank selects recipients for such solicitations:
  - Learn from the bank its criteria for such selections.
  - Review any guidance or other information the bank provided credit reporting companies or other companies that supply such lists.

b. Media Usage
- Determine in which newspapers and broadcast media the bank advertises.
  - Identify any racial or national origin identity associated with those media.
  - Determine whether those media focus on geographical communities of a particular racial or national origin character.
- Learn the bank's strategies for geographic and demographic distribution of advertisements.
- Obtain and review copies of the bank's printed advertising and promotional materials.
- Determine what criteria the bank communicates to media about what is an attractive customer or an attractive area to cultivate business.
- Determine whether advertising and marketing are the same to racial and national origin minority areas as compared to nonminority areas.

c. Self-produced promotional materials
- Learn how the bank distributes its own promotional materials, both methods and geographical distribution.
- Learn what the bank regards as the target audience(s) for those materials.

d. Realtors, brokers, contractors, and other intermediaries
- Determine whether the bank solicits business from specific realtors, brokers, home improvement contractors, and other conduits.
- Learn how the bank decides which intermediaries it will solicit.
- Identify the parties contacted and determine the distribution between minority and nonminority areas.
- Obtain and review the types of information the bank distributes to intermediaries.
- Determine how often the bank contacts intermediaries.
- Determine what criteria the bank communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.

Step 2. Determine whether the bank's activities show a significantly lower level of marketing effort toward minority areas or toward media or intermediaries that tend to reach minority areas.

Step 3. If there is any such disparity, document the bank's explanation for it.

For additional guidance, refer to **Part C** of the **Special Analyses** section in the **Appendix**.

H. Credit Scoring.

If the scoping process results in the selection of a Focal Point that includes a credit or mortgage scored loan product, refer to **Part B** of the **Credit Scoring Analysis** section of the **Appendix**.

If the institution utilizes a credit scoring program which scores age for any loan product selected for review in the scoping stage, either as the sole underwriting determinant or only as a

guide to making loan decisions, refer to **Part D** of the **Credit Scoring Analysis** section of the **Appendix**.

I. Disparate Impact Issues.

These procedures have thus far focused primarily on examining comparative evidence for possible unlawful *disparate treatment*. Disparate *impact* has been described briefly in the Introduction. Whenever an examiner believes that a particular policy or practice of a lender appears to have a *disparate impact* on a prohibited basis, the examiner should refer to **Part A** of the **Special Analyses** section of the **Appendix** or consult with agency managers for further guidance.

Part IV—Obtaining and Evaluating Responses from the Lender and Concluding the Examination

Step 1. Present to the institution's management for explanation:

a. Any **overt** evidence of disparate treatment on a prohibited basis.
b. All instances of apparent **disparate treatment** (e.g., overlaps) in either the underwriting of loans or in loan prices, terms, or conditions.
c. All instances of apparent **disparate treatment** in the form of discriminatory steering, redlining, or marketing policies or practices.
d. All instances where a denied prohibited basis applicant was not afforded the same **level of assistance** or the **same benefit of discretion** as an approved control group applicant who was no better qualified with regard to the reason for denial.
e. All instances where a prohibited basis applicant received **conspicuously** less favorable treatment by the lender than was **customary** from the lender or was **required** by the lender's policy.
f. Any statistically significant average difference in either the **frequency** or **amount of pricing disparities** between control group and prohibited basis group applicants.
g. Any evidence of neutral policies, procedures or practices that appear to have a **disparate impact or effect** on a prohibited basis.

Explain that unless there are legitimate, nondiscriminatory explanations (or in the case of disparate impact, a compelling business justification) for each of the preliminary findings of discrimination identified in this Part, the agency could conclude that the lender is in violation of the applicable fair lending laws.

Step 2. Document all responses that have been provided by the institution, not just its "best" or "final" response. Document each discussion with dates, names, titles, questions, responses, any information that supports or undercuts the lender's credibility, and any other information that bears on the issues raised in the discussion(s).

Step 3. Evaluate whether the responses are consistent with previous statements, information obtained from file review, documents, reasonable banking practices, and other sources, and satisfy common-sense standards of logic and credibility.

a. Do not speculate or assume that the institution's decision-maker had specific intentions or considerations in mind when he or she took the actions being evaluated. Do not, for example, conclude that because you have noticed a legitimate, nondiscriminatory reason for a denial (such as an applicant's credit weakness), that no discrimination occurred unless it is clear that, at the time of the denial, the lender actually based the denial on that reason.
b. Perform follow-up file reviews and comparative analyses, as necessary, to determine the accuracy and credibility of the lender's explanations.
c. Refer to **Evaluating Responses to Evidence of Disparate Treatment** in the **Appendix** for guidance as to common types of responses.
d. Refer to the **Disproportionate Adverse Impact** portion of the **Special Analyses** section of the **Appendix** for guidance on evaluating the institution's responses to apparent disparate impact.

Step 4. If, after completing steps one through three above, you conclude that the institution has failed to adequately demonstrate that one or more apparent violations had a legitimate nondiscriminatory basis or were otherwise lawful, prepare a documented list or discussion of violations, or a draft examination report, as prescribed by agency directives.

Step 5. Consult with agency managers regarding whether (a) any violations should be referred to the Departments of Justice or Housing and Urban Development and (b) enforcement action should be undertaken by your agency.

Appendices

Compliance Management Analysis Checklist

This checklist is for use in conjunction with Part II of these procedures as a device for evaluating the quality of preventive and corrective measures, identifying worthwhile innovations and offering suggestions for improvement. The checklist is not, however, intended to be an absolute test of a lender's compliance management program. Lender programs containing all or most of the features described in the list may nonetheless be flawed for other reasons; conversely, a compliance program which encompasses only a portion of the factors listed below may nonetheless adequately support a strong program under appropriate circumstances. In short, the examiner must exercise his or her best judgment in utilizing this list and in assessing the overall quality of a lender's efforts to ensure fair lending compliance.

If the transactions within the proposed scope are covered by a listed self-compliance measure, check the box in the left column. Reduce the intensity (mainly the sample size) of the planned comparative file review to the degree that the self-compliance measures cover transactions within the proposed scope. Document your findings in sufficient detail to justify any resulting reduction in the intensity of the examination.

You are not required to learn whether self-compliance measures apply to specific products outside the proposed scope. However, if the information you have obtained shows that the self-compliance measure is a general practice of the lender, check the box in the second column in order to assist future examination planning.

Preventive Measures

Determine whether policies and procedures exists that tend to prevent illegal disparate treatment in the transactions you plan to examine. There is no legal or agency requirement for institutions to conduct these activities. The absence of any of these policies and practices is never, by itself, a violation.

1. Lending Practices and Standards	Within the proposed scope	Lender-wide
a. Principal policy issues:		
1. Are **underwriting practices** clear and similar to industry standards?		
2. Is **pricing** within reasonably confined ranges with guidance linking variations to risk and/or cost factors?		
3. Does management monitor the nature and frequency of **exceptions** to its standards?		
4. Are denial reasons accurately and promptly communicated to unsuccessful applicants? ***Note:*** The items above are not compliance measures, but they are fundamental features of lending that tend to work against disparate treatment.		
b. Do training, application-processing aids, and other guidance correctly and adequately describe:		
1. Prohibited bases under ECOA, Regulation B, and the Fair Housing Act?		
2. Other substantive credit access requirements of Regulation B (e.g. spousal signatures, improper inquiries, protected income)?		
c. Is it specifically communicated to employees that they must not, on a prohibited basis:		
1. Refuse to deal with individuals inquiring about credit?		
2. Discourage inquiries or applicants by delays, discourtesy, or other means?		

	Within the proposed scope	Lender-wide
3. Provide different, incomplete, or misleading information about the availability of loans, application requirements, and processing and approval standards or procedures (including selectively informing applicants about certain loan products while failing to inform them of alternatives)?		
4. Encourage or more vigorously assist only certain inquirers or applicants?		
5. Refer credit seekers to other lenders?		
6. Waive or grant exceptions to application procedures or credit standards?		
7. State a willingness to negotiate?		
8. Use different procedures or standards to evaluate applications?		
9. Use different procedures to obtain and evaluate appraisals?		
10. Provide certain applicants opportunities to correct or explain adverse or inadequate information, or to provide additional information?		
11. Accept alternative proofs of creditworthiness?		
12. Require co-signers?		
13. Offer or authorize loan modifications?		
14. Suggest or permit loan assumptions?		
15. Impose late charges, reinstatement fees, etc.?		
16. Initiate collection or foreclosure?		
d. Has the institution taken specific initiatives to prevent forms of unintentional discrimination, including:		
1. Basing credit decisions on assumptions derived from racial, gender, and other stereotypes, rather than facts?		
2. Seeking customers from a particular racial, ethnic, or religious group, or of a particular gender, to the exclusion of other types of customers, on the basis of how "comfortable" the employee may feel in dealing with those different from him/her?		
3. Because of their discomfort or unease in dealing with customers from certain racial, ethnic, or religious groups, or of a certain gender, limiting the exchange of credit-related information or their effort to qualify the applicant?		
4. Is the institution's CRA assessment area drawn without unreasonably excluding minority areas?		

	Within the proposed scope	Lender-wide
e. Does the institution have procedures to ensure that it does not:		
1. State racial or ethnic limitations in advertisements?		
2. Employ code words in advertisements that convey racial or ethnic limitations?		
3. Place advertisement that a reasonable person would regard as indicating minority customers are less desirable?		
4. Advertise only in media serving non-minority areas of the market?		
5. Conduct other forms of marketing only in non-minority areas of the market?		
6. Market only through brokers known to serve only one racial or ethnic group in the market?		
7. Use a prohibited basis in any pre-screened solicitation?		

(This page intentionally left blank.)

2. Compliance Audit Function: Does the Bank Attempt to Detect Prohibited Disparate Treatment by Self-Test or Self-Evaluation?

Note: A self-test is any program, practice or study that is designed and specifically used to assess the institution's compliance with the ECOA and the Fair Housing Act statute or regulation and creates data or factual information that is not otherwise available and cannot be derived from loan, application or other records related to credit transactions (12 CFR 202.15(b)(1) and (24 CFR 100.141). The report, results, and many other records associated with a self-test are privileged unless an institution voluntarily discloses the report or results or otherwise forfeits the privilege. *See* 12 CFR 202.15(b)(2) and 24 CFR 100.142(a) for a complete listing of the types of information covered by the privilege. A self-evaluation, while generally having the same purpose as a self-test, does not create any new data or factual information, but uses data readily available in loan or application files and other records used in credit transactions and, therefore, does not meet the self-test definition. *See* Streamlining the Examination in this **Job Aids** for more information about self-tests and self-evaluations.

While you may request the results of self-evaluations, you should not request the results of self-tests or any of the information listed in 12 CFR 202.15(b)(2) and 24 CFR 100.142(a). If an institution discloses the self-test report or results to its regulator, it will lose the privilege. The following items are intended to obtain information about the bank's approach to self-testing and self-evaluation, not the findings. Complete the checklist below for each self-evaluation and each self-test, where the institution voluntarily discloses the report or results. Evaluating the results of self-evaluations and voluntarily disclosed self-tests is described in **Streamlining the Examination** in the **Appendix**.

Mark the box if the answer is "yes" for the transactions within the scope.

	Within the proposed scope	Lender-wide
a. Are the transactions reviewed by an independent analyst who:		
1. Is directed to report objective results?		
2. Has an adequate level of expertise?		
3. Produces written conclusions?		
b. Does the bank's approach for self-testing or self-evaluation call for:		
1. Attempting to explain major patterns shown in the HMDA or other loan data?		
2. Determining whether actual practices and standards differ from stated ones and basing the evaluation on the actual practices?		
3. Evaluating whether the reasons cited for denial are supported by facts relied on by the decision maker at the time of the decision?		
4. Comparing the treatment of prohibited basis group applicants to control group applicants?		
5. Obtaining explanations from decision makers for any unfavorable treatment of the prohibited basis group that departed from policy or customary practice?		
6. Covering significant decision points in the loan process where disparate treatment or discouragement might occur, including:		
The approve/deny decision?		
Pricing?		
Other terms and conditions?		

	Within the proposed scope	Lender-wide
7. Covering at least as many transactions as examiners would independently, if using the Fair Lending Sample Size Tables for a product with the application volumes of the product to be evaluated?		
8. Maintaining information concerning personal characteristics collected as part of a self-test separately from application or loan files?		
9. Timely analysis of the data?		
10. Taking appropriate and timely corrective action?		
c. In the bank's plan for comparing the treatment of prohibited basis group applicants with that of control group applicants:		
1. Are control and prohibited basis groups based on a prohibited basis found in ECOA or the FHAct and defined clearly to isolate that prohibited basis for analysis?		
2. Are appropriate data to be obtained to document treatment of applicants and the relative qualifications vis-à-vis the requirement in question?		
3. Are the data to be obtained the data on which decisions were based, not later or irrelevant information?		
4. Does the plan call for comparing the denied applicants' qualifications related to the stated reason for denial with the corresponding qualifications for approved applicants?		
5. Are comparisons designed to identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?		
6. Is the evaluation designed to determine whether control and prohibited basis group applicants were treated differently in the processes by which the bank helped applicants overcome obstacles and by which their qualifications were enhanced?		
7. Are responses and explanations to be obtained for any apparent disparate treatment on a prohibited basis or other apparent violations of credit rights?		
8. Are reasons cited by credit decision makers to justify or explain instances of apparent disparate treatment to be verified?		
d. For self-tests under ECOA that involved the collection of applicant personal characteristics, did the institution:		
1. Develop a written plan that describes or identifies the:		
specific purpose of the self-test?		
methodology to be used?		

	Within the proposed scope	Lender-wide
geographic area(s) to be covered?		
type(s) of credit transactions to be reviewed?		
entity that will conduct the test and analyze the data?		
timing of the test, including start and end dates or the duration of the self-test?		
other related self-test data that is not privileged?		
2. Disclose at the time applicant characteristic information is requested, that:		
the applicant will not be required to provide the information?		
the creditor is requesting the information to monitor its compliance with ECOA?		
federal law prohibits the creditor from discriminating on the basis of this information or on the basis of an applicant's decision not to furnish the information?		
if applicable, certain information will be collected based on visual observation or name if not provided by the applicant?		

(This page intentionally left blank.)

3. Correcting Discriminatory Conduct		
	Within the proposed scope	**Lender-wide**
a. Determine whether the lender has provisions to take appropriate corrective action and provide adequate relief to victims for any violations in the transactions you plan to review.		
1. Who is to receive the results of a self-evaluation or voluntarily disclosed self-test?		
2. What decision process is supposed to follow delivery of the information?		
3. Is feedback to be given to staff whose actions are reviewed?		
4.. What types of corrective action may occur?		
5. Are customers to be:		
Offered credit if they were improperly denied?		
Compensated for any damages, both out of pocket and compensatory?		
Notified of their legal rights?		
b. Other corrective action:		
1. Are institutional policies or procedures that may have contributed to the discrimination to be corrected?		
2. Are employees involved to be trained and/or disciplined?		
3, Is the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the lender's market to be considered?		
4. Are audit and oversight systems to be improved in order to ensure there is not recurrence of any identified discrimination?		

(This page intentionally left blank.)

Credit Scoring Analysis

These procedures are intended to assist an examiner in arriving at supportable conclusions with respect to an institution's record of non-discrimination when the Focal Point involves a product for which the institution uses automated underwriting or when credit scoring risk factors make such a product the Focal Point.

A. Structure and Organization of the Scoring System

Determine the utilization of credit scoring at the institution, including

1. For each customized credit scoring model or scorecard for any product, or for any credit scoring model used in connection with a product held in portfolio, identify:
   a. the number and inter-relationship of each model or card applied to a particular product;
   b. the purposes for which each card is employed (e.g., approval decision, set credit limits, set pricing, determine processing requirements, etc.);
   c. the developer of each card used (e.g., in-house department, affiliate, independent vendor name) and describe the development population utilized;
   d. the types of monitoring reports generated (including front-end, back-end, account management and any disparate impact analyses), the frequency of generation and recent copies of each;
   e. all policies applicable to the use of credit scoring;
   f. training materials and programs on credit scoring for employees, agents and brokers involved in any aspect of retail lending;
   g. any action taken to revalidate or re-calibrate any model or scorecard used during the exam period and the reason(s) why;
   h. the number of all high-side and low-side overrides for each type of override occurring during the exam period and any guidance given to employees on their ability to override;
   i. all cutoffs used for each scorecard throughout the examination period and the reasons for any change made during the exam period;
   j. all variables scored by each product's scorecard(s) and the values that each variable may take; and
   k. the method used to select for disclosure those adverse action reasons arising from application of the model or scorecard.
2. For each judgmental underwriting system that includes as an underwriting criterion a standard credit bureau or secondary market credit score identify:
   a. the vendor of each credit score and any vendor recommendation or guidance on the usage of the score relied upon by the institution;
   b. the institution's basis for using the particular bureau or secondary market score and the cutoff standards for each product's underwriting system and the reasons for any changes to the same during the exam period;
   c. the number of exceptions or overrides made to the credit score component of the underwriting criteria and the basis for those exceptions or overrides, including any guidance given to employees on their ability to depart from credit score underwriting standards, and;
   d. types of monitoring reports generated on the judgmental system or its credit scoring component (including front-end, back-end, differential processing and disparate impact analysis), the frequency of generation and recent copies of each.

B. Adverse Action Disclosure Notices

Determine the methodology used to select the reasons why adverse action was taken on a credit application denied on the basis of the applicant's credit score. Compare the methodology used to the examples recited in the Commentary to Regulation B and decide acceptability against that standard. Identify any consumer requests for reconsideration of credit score denial reasons and review the action taken by management for consistency across applicant groups.

Where a credit score is used to differentiate application processing, and an applicant is denied for failure to attain a judgmental underwriting standard that would not be applied if the applicant had received a better credit score (thereby being considered in a different—presumably less stringent application processing group), ensure that the adverse action notice also discloses the bases on which the applicant failed to attain the credit score required for consideration in the less stringent processing group.

C. Disparate Treatment in the Application of Credit Scoring Programs

1. Determine what controls and policies management has implemented to ensure that the institution's credit scoring models or credit score criteria are not applied in a discriminatory manner; in particular:
   a. Examine institution guidance on using the credit scoring system, on handling overrides and on processing applicants and how well that guidance is understood and observed by the targeted employees and monitored for compliance by management.
   b. Examine institution policies that permit overrides or that provide for different processing or underwriting requirements based on **geographic identifiers** or

borrower score ranges to assure that they do not treat protected group applicants differently than other similarly situated applicants.

2. Evaluate whether any of the bases for granting credit to control group applicants who are low-side overrides are applicable to any prohibited basis denials whose credit score was equal to or greater than the lowest score among the low-side overrides. If such cases are identified, obtain and evaluate management's reason for why such different treatment is not a fair lending violation.
3. Evaluate whether any of the bases for denying credit to any prohibited basis applicants who are high side overrides are applicable to any control group approvals whose credit score was equal to or less than the highest score among the prohibited basis high-side overrides. If such cases are identified, obtain and evaluate management's reason for why such different treatment is not a fair lending violation.
4. If credit scores are used to segment applicants into groups that receive different processing or are required to meet additional underwriting requirements (e.g., "tiered risk underwriting"), perform a comparative file review, or confirm the results and adequacy of management's comparative file review, that evaluates whether all applicants within each group are treated equally.

D. Credit Scoring Systems that Include Age

Regulation B does not require initial validation or periodic revalidation of a credit scoring system unless it considers age. There are two ways a credit scoring system can consider age: 1) the system can be split into different scorecards depending on the age of the applicant; and 2) age may be directly scored as a variable. Both features may be present in some systems. Regulation B requires that all credit scoring systems that consider age in either of these ways must be validated (in the language of the regulation, empirically derived, demonstrably and statistically sound (EDDSS)).

1. Age-Split Scorecards: If a system is split into only two cards and one card covers a wide age range that encompasses elderly applicants (applicants 62 or older), the system is treated as considering, but not scoring, age. Typically, the younger scorecard in an age-split system is used for applicants under a specific age between 25 and 30. It de-emphasizes factors such as the number of trade lines and the length of employment, and increases the negative weight of any derogatory information on the credit report. Systems such as these do not raise the issue of assigning a negative factor or value to the age of an elderly applicant. However, if age is directly scored as a variable (whether or not the system is age-split), or if elderly applicants are included in a card with a narrow age range in an age-split system, the system is treated as scoring age.

2 Scorecards that Score Age: If a scorecard scores age directly, in addition to meeting the EDDSS requirement, the creditor must ensure that the age of an elderly applicant is not assigned a negative factor or value. (*See* the staff commentary about 12 CFR 202.2(p) and 202.6(b)(2)). A negative factor or value means utilizing a factor, value, or weight that is less favorable than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the most favored age group below the age of 62 (12 CFR 202.2(v)).

E. Examination for Empirical Derivation and Statistical Soundness

Regulation B requires credit scoring systems that use age must be EDDSS to be empirically derived, and demonstrably and statistically sound. This means that they must fulfill the requirements of 12 CFR 202.2(p)(1)(i) - (iv). Obtain documentation provided by the developer of the system and consult the agency's most recent guidance for making that determination.

Evaluating Responses to Evidence of Disparate Treatment

Responses to Comparative Evidence of Disparate Treatment

The following are responses that a lender may offer — separately or in combination — to attempt to explain that the appearance of illegal disparate treatment is misleading, and that no violation has in fact occurred. The responses, **if true**, rebut the appearance of disparate treatment. The examiners must evaluate the validity and credibility of the responses.

1. **The lender's personnel were unaware of the prohibited basis identity of the applicant(s).**

   If the lender claims to have been unaware of the prohibited basis identity (race, etc.) of an applicant or neighborhood, ask it to show that the application in question was processed in such a way that the institution's staff that made the decisions could not have learned the prohibited basis identity of the applicant.

   If the product is one for which the institution maintains prohibited basis monitoring information, assume that all employees could have taken those facts into account. Assume the same when there was face-to-face contact between any employee and the customer.

   If there are other facts about the application from which an ordinary person would have recognized the applicant's prohibited basis identity (for example, the surname is an easily recognizable Hispanic one), assume that the institution's staff drew the same conclusions. If the racial character of a community is in question, ask the institution to provide persuasive evidence why its staff would **not** know the racial character of any community in its service area.

2. **The difference in treatment was justified by differences in the applicants (applicants not "similarly situated").**

   Ask the lender to account for the difference in treatment by pointing out a specific difference between the applicants' qualifications, or some factor not captured in the application but that legitimately makes one applicant more or less attractive to the lender, or some non-prohibited factor related to the processing of their applications. The difference identified by the lender must be one that is important enough to justify the difference in treatment in question, not a meaningless difference.

   The factors commonly cited to show that applicants are not similarly situated fall into two groups: those that can be evaluated by how consistently they are handled in other transactions, and those that cannot be evaluated in that way.

   a. Verifying "not similarly situated" explanations by consistency

The appearance of disparate treatment remains if a factor cited by the lender to justify favorable treatment for a control group applicant also exists for an otherwise similar prohibited basis applicant who was treated *un*favorably. Similarly, the appearance of disparate treatment remains if a factor cited by the lender to justify *un*favorable treatment for a prohibited basis applicant also exists for a control group applicant that got favorable treatment. If this is not so, ask the lender to document that the factor cited in its explanation was used consistently for control group and prohibited basis applicants.

Among the responses that should be evaluated this way are:

- **Customer relationship**. Ask the lender to document that a customer relationship was also sometimes considered to the benefit of prohibited basis applicants and/or that its absence worked against control group customers.
- "**Loan not saleable or insurable**." If file review is still in progress, be alert for loans approved despite the claimed fatal problem. At a minimum, ask the lender to be able to produce the text of the secondary market or insurer's requirement in question.
- **Difference in standards or procedures between branches or underwriters**. Ask the lender to provide transactions documenting that each of the two branches or underwriters applied its standards or procedures consistently to both prohibited basis and control group applications it processed, and that each served similar proportions of the prohibited basis group.
- **Difference in applying the same standard (difference in "strictness") between underwriter, branches, etc.** Ask the lender to provide transactions documenting that the stricter employee, branch, etc., was strict for both prohibited basis and control group applicants and that the other was lenient for both, and that each served similar proportions of the prohibited basis group. The best evidence of this would be prohibited basis applicants who received favorable treatment from the lenient branch and control group applicants who received less favorable treatment from the "strict" branch.
- **Standards or procedures changed during period reviewed**. Ask the lender to provide transactions documenting that during each period the standards were applied consistently to both prohibited basis and control group applicants.
- **Employee misunderstood standard or procedure**. Ask the lender to provide transactions documenting

that the misunderstanding influenced both prohibited basis and control group applications. If that is not available, find no violation if the misunderstanding is a reasonable mistake.

b. Evaluating "not similarly situated" explanations by other means

If consistency cannot be evaluated, consider an explanation favorably even without examples of its consistent use if:

- the factor is documented to exist in (or be absent from) the transactions, as claimed by the institution;
- the factor is one a prudent lender would consider;
- file review found no evidence that the factor is applied selectively on a prohibited basis (in other words, the lender's explanation is "not inconsistent with available information"); and
- the lender's description of the transaction is generally consistent and reasonable.

Some factors that may be impossible to compare for consistency are:

- **Unusual underwriting standard**. Ask the lender to show that the standard is prudent. If the standard is prudent and not inconsistent with other information, accept this explanation even though there is no documentation that it is used consistently.
- "**Close calls**." The lender may claim that underwriters' opposite decisions on similar applicants reflects legitimate discretion that the examiners should not second guess. That is **not** an acceptable explanation for **identical** applicants with different results, but is acceptable when the applicants have differing strengths and weaknesses that different underwriters might reasonably weigh differently. However, do not accept the explanation if other files reveal that these "strengths" or "weaknesses" are counted or ignored selectively on a prohibited basis.
- "**Character loan**." Expect the lender to identify a specific history or specific facts that make the applicant treated favorably a better risk than those treated less favorably.
- "**Accommodation loan**." There are many legitimate reasons that may make a transaction appealing to a lender apart from the familiar qualifications demanded by the secondary market and insurers. For example, a customer may be related to or referred by an important customer, be a political or entertainment figure who would bring prestige to the institution, be an employee of an important business customer, etc. It is not illegal discrimination to make a loan to an otherwise unqualified control group applicant who has such attributes while denying a loan to an otherwise similar prohibited basis applicant without them. However, be skeptical when the lender cites reasons for "accommodations" that an ordinary prudent lender would not value.
- "**Gut feeling**." Be skeptical when lenders justify an approval or denial by a general perception or reaction to the customer. Such a perception or reaction may be linked to a racial or other stereotype that legally must not influence credit decisions. Ask whether any specific event or fact generated the reaction. Often, the lender can cite something **specific** that made him or her confident or uncomfortable about the customer. There is no discrimination if it is credible that the lender indeed considered such a factor and did not apply it selectively on a prohibited basis.

c. Follow up customer contacts

If the lender's explanation of the handling of a particular transaction is based on customer traits, actions, or desires not evident from the file, consider *obtaining agency authorization* to contact the customer to verify the lender's description. Such contacts need not be limited to possible victims of discrimination, but can include *control group applicants* or other witnesses.

3. The different results stemmed from an inadvertent error.

If the lender claims an **identified error** such as miscalculation or misunderstanding caused the favorable or unfavorable result in question, evaluate whether the facts support the assertion that such an event occurred.

If the lender claims an "**unidentified error**" caused the favorable or unfavorable result in question, expect the lender to provide evidence that discrimination is inconsistent with its demonstrated conduct, and therefore that discrimination is the less logical interpretation of the situation. Consider the context (as described below).

4 The apparent disparate treatment on a prohibited basis is a misleading portion of a larger pattern of random inconsistencies.

Ask the institution to provide evidence that the unfavorable treatment is not limited to the prohibited basis group and that the favorable treatment is not limited to the control group. Without such examples, do not accept a lender's unsupported claim that otherwise inexplicable differences in treatment are distributed randomly.

If the lender can document that similarly situated prohibited basis applicants received the favorable treatment in question approximately **as frequently** and **in comparable degree** as the control group applicants, conclude there is no violation.

NOTE: Transactions are relevant to "random inconsistency" only if they are "similarly situated" to those apparently treated unequally.

5. Loan terms and conditions.

The same analyses described in the preceding sections with regard to decisions to approve or deny loans also apply to pricing differences. Risks and costs are legitimate considerations in setting prices and other terms and conditions of loan products. However, generalized reference by the lender to "cost factors" is insufficient to explain pricing differences.

If the lender claims that specific borrowers received different terms or conditions because of **cost or risk considerations**, ask the lender to be able to identify specific risk or cost differences between them.

If the lender claims that specific borrowers received different terms or conditions because they were **not similarly situated as negotiators**, consider whether application records might provide relevant evidence. If the records are not helpful, consider seeking authorization to contact customers to learn whether the lender in fact behaved comparably toward prohibited basis and control group customers. The contacts would be to learn such information as the lender's opening quote of terms to the customer and the progress of the negotiations.

If the institution responds that an average price difference between the control and prohibited basis groups is based on cost or risk factors, ask it to identify specific risk or cost differences between individual control group applicants with the lowest rates and prohibited basis group applicants with the highest that are significant enough to justify the pricing differences between them. If the distinguishing factors cited by the institution are legitimate and verifiable as described in the sections above, remove those applications from the average price calculation. If the average prices for the remaining control group and prohibited basis group members still differ more than minimally, consult within the agency about obtaining an analysis of whether the difference is statistically significant. Find a violation only if (1) there is evidence of disparate treatment of similarly situated borrowers or (2) there is a particular risk factor that meets all the criteria for a disproportionate adverse impact violation.

B. Responses to Overt Evidence of Disparate Treatment

1. Descriptive references vs. lending considerations.

A reference to race, gender, etc., does not constitute a violation if it is merely descriptive for example, "the applicant was young." In contrast, when the reference reveals that the prohibited factor influenced the lender's decisions and/or customer behavior, treat the situation as an apparent violation to which the lender must respond.

2. Personal opinions vs. lending considerations.

If an employee involved with credit availability states unfavorable views regarding a racial group, gender, etc., but does not explicitly relate those views to credit decisions, review that employee's credit decisions for possible disparate treatment of the prohibited basis group described unfavorably. If there are no instances of apparent disparate treatment, treat the employee's views as permissible private opinions. Inform the lender that such views create a risk of future violations.

3. Stereotypes related to credit decisions.

There is an apparent violation when a prohibited factor influences a credit decision through a stereotype related to creditworthiness, even if the action based on the stereotype seems well-intended for example, a loan denial because "a single woman could not maintain a large house." If the stereotyped beliefs are offered as "explanations" for unfavorable treatment, regard such unfavorable treatment as apparent illegal disparate treatment. If the stereotype is only a general observation unrelated to particular transactions, review that employee's credit decisions for possible disparate treatment of the prohibited basis group in question. Inform the lender that such views create a risk of future violations.

4. Indirect reference to a prohibited factor.

If negative views related to creditworthiness are described in non-prohibited terms, consider whether the terms would commonly be understood as surrogates for prohibited terms. If so, treat the situation as if explicit prohibited basis terms were used. For example, a lender's statement that "It's too risky to lend north of 110th Street" might be reasonably interpreted as a refusal to lend because of race if that portion of the lender's lending area north of 110th Street were predominantly black and the area south white.

5. Lawful use of a prohibited factor.

a. Special Purpose Credit Program (SPCP)

If a lender claims that its use of a prohibited factor is lawful because it is operating an SPCP, ask the lender to document that its program conforms to the requirements of Regulation B. An SPCP must be defined in a written plan that existed before the lender made any decisions on loan applications under the program. The written plan must:

- demonstrate that the program will benefit persons who would otherwise be denied credit or receive credit on less favorable terms; and
- state the time period the program will be in effect or when it will be re-evaluated.

No provision of an SPCP should deprive people who are not part of the target group of rights or opportunities they otherwise would have. Qualified programs operating on an otherwise-prohibited basis will not be cited as a violation.

Note: Advise the lender that an agency finding that a program is a lawful SPCP is not absolute security against legal challenge by private parties. Suggest that an institution concerned about legal challenge from other quarters use exclusions or limitations that are not prohibited by ECOA or the FHAct, such as "first-time home buyer."

b. Second review program

Such programs are permissible if they do no more than ensure that lending standards are applied fairly and uniformly to all applicants. For example, it is permissible to review the proposed denial of applicants who are members of a prohibited basis groups by comparing their applications to the approved applications of similarly qualified individuals who are in the control group to determine if the applications were evaluated consistently.

Ask the lender to demonstrate that the program is a safety net that merely attempts to prevent discrimination, and does not involve underwriting terms or practices that are preferential on a prohibited basis.

Statements indicating that the mission of the program is to apply different standards or efforts on behalf of a particular racial or other group constitute overt evidence of disparate treatment. Similarly, there is an apparent violation if comparative analysis of applicants who are processed through the second review and those who are not discloses dual standards related to the prohibited basis.

c. Affirmative marketing/advertising program

Affirmative advertising and marketing efforts that do not involve application of different lending standards are permissible under both the ECOA and the FHAct. For example, special outreach to a minority community would be permissible.

Fair Lending Sample Size

Table A

Underwriting (Accept/Deny) Comparisons

	Sample 1 Prohibited Basis Denials			Sample 2 Control Group Approvals		
Number of Denials or Approvals	5–50	51–150	>150	20–50	51–250	>250
Minimum to Review	All	51	75	20	51	100
Maximum to Review	50	100	150	5x prohibited basis sample (up to 50)	5x prohibited basis sample (up to 125)	5x prohibited basis sample (up to 300)

Table B

Terms and Conditions Comparisons[1]

	Sample 1 Prohibited Basis Denials			Sample 2 Control Group Approvals		
Number of Approvals	5–25	26–100	>100	20–50	51–250	>250
Minimum to Review	All	26	50	20	40	60
Maximum to Review	25	50	75	5x prohibited basis sample (up to 50)	5x prohibited basis sample (up to 75)	5x prohibited basis sample (up to 100)

1 Do not use for most pricing cases. which typically involve an entire universe, not a sample.

Explanatory Notes to Sample Size Tables

1. When performing both underwriting and terms and conditions comparisons, use the same control group approval sample for both tasks.
2. If there are fewer than 5 prohibited basis denials or 20 control group approvals, refer to "Sample Size" instructions in the procedures.
3. "Minimum" and "maximum" sample sizes: select a sample size between the minimum and maximum based on the outcome of the Compliance Management Review conducted in Part II of these procedures. Once the sample size has been determined, select individual transactions judgmentally. Refer to procedures.
4. If two prohibited basis groups (e.g., Black and Hispanic) are being compared against one control group, select a control group that is 5 times greater than the larger prohibited basis group sample, up to the maximum.
5. Where the institution's discrimination risk profile identifies significant discrepancies in withdrawal/incomplete activity between control and prohibited basis groups, or where the number of marginal prohibited basis group files available for sampling is small, an examiner may consider supplementing samples by applying the following rules:
   - If prohibited basis group withdrawals/incompletes occur after the applicant has received an offer of credit that includes pricing terms, this is a reporting error under Regulation C (the lender should have reported the application as approved but not accepted) and therefore these applications should be included as prohibited basis group approvals in a terms and conditions comparative file analysis.
   - If prohibited basis group incompletes occur due to lack of an applicant response with respect to an item that would give rise to a denial reason, then include them as denials for that reason when conducting an underwriting comparative file analysis.

(This page intentionally left blank.)

Marginal Transactions

Marginal Denials

Denied applications with any or all the following characteristics are "marginal." Such denials are compared to marginal approved applications. Marginal applications include those that:

- Were close to satisfying the requirement that the adverse action notice said was the reason for denial;
- Were denied by the lender's rigid interpretation of inconsequential processing requirements;
- Were denied quickly for a reason that normally would take a longer time for an underwriter to evaluate;
- Involved an unfavorable subjective evaluation of facts that another person might reasonably have interpreted more favorably (for example, whether late payments actually showed a "pattern," or whether an explanation for a break in employment was "credible");
- Resulted from the lender's failure to take reasonable steps to obtain necessary information;
- Received unfavorable treatment as the result of a departure from customary practices or stated policies. For example, if it is the lender's stated policy to request an explanation of derogatory credit information, a failure to do so for a prohibited basis applicant would be a departure from customary practices or stated policies even if the derogatory information seems to be egregious;
- Were similar to an approved control group applicant who received unusual consideration or service, buy were not provided such consideration or service;
- Received unfavorable treatment (for example, were denied or given various conditions or more processing obstacles) but appeared fully to meet the lender's stated requirements for favorable treatment (for example, approval on the terms sought);
- Received unfavorable treatment related to a policy or practice that was vague, and/or the file lacked documentation on the applicant's qualifications related to the reason for denial or other factor;
- Met common secondary market or industry standards even though failing to meet the lender's more rigid standards;
- Had a strength that a prudent lender might believe outweighed the weaknesses cited as the basis for denial;
- Had a history of previously meeting a monthly housing obligation equivalent to or higher than the proposed debt; and/or
- Were denied for an apparently "serious" deficiency that might easily have been overcome. For example, an applicant's total debt ratio of 50 percent might appear grossly to exceed the lenders guideline of 36 percent, but this may in fact be easily corrected if the application lists assets to pay off sufficient nonhousing debts to reduce the ratio to the guideline, or if the lender were to count excluded part-time earnings described in the application.

Marginal Approvals

Approved applications with any or all of the following characteristics are "marginal." Such approvals are compared to marginal denied approved applications. Marginal approvals include those:

- Whose qualifications satisfied the lender's stated standard, but very narrowly;
- That bypassed stated processing requirements (such as verifications or deadlines);
- For which stated creditworthiness requirements were relaxed or waived;
- That, if the lender's own standards are not clear, fell short of common secondary market or industry lending standards;
- That a prudent conservative lender might have denied;
- Whose qualifications were raised to a qualifying level by assistance, proposals, counteroffers, favorable characterizations or questionable qualifications, etc.; and/or
- That in any way received unusual service or consideration that facilitated obtaining the credit.

(This page intentionally left blank.)

Potential Scoping Information

This **Job Aid** offers a full range of documentation and other information that might conceivably be brought to bear in an examination. In that sense, it is a "menu" of resources to be considered and selected from, depending on the nature and scope of the examination being conducted. Any decision to select one or more particular items from this **Job Aids** for inclusion in a particular examination should, of course, include consideration of any burdens to the agency and lender in assembling and providing the selected item(s).

Internal Agency Documents and Records.

1. Previous examination reports and related work papers for the most recent Compliance / CRA and Safety and Soundness Examinations.
2. Demographic data for the institution's community.
   Comment: The examiner should obtain the most recent agency demographic data, for information on the characteristics of the institution's assessment/market areas.

Information from the institution.

Comment: Prior to beginning a compliance examination, the examiner should request the institution to provide the information outlined below. This request should be made far enough in advance of the on-site phase of the examination to facilitate compliance by the institution. In some institutions, the examiner may not be able to review certain of this information until the on-site examination.

1. **Institution's Compliance Program**. (For examinations that will include analysis of the lender's compliance program.)
   a. Organization charts identifying those individuals who have lending responsibilities or compliance, HMDA or CRA responsibilities, together with job descriptions for each such position.
   b. Lists of any pending litigation or administrative proceedings concerning fair lending matters.
   c. Results of self-evaluations or self-tests where the institution chooses to share the report or results, copies of audit or compliance reviews of the institution's program for compliance with fair lending laws and regulations, including both internal and independent audits.

      Comment: The request should advise the lender that it is not required to disclose the report or results of any self-tests of the type protected under amendments to ECOA and the FHAct programs.
   d. Complaint file.
   e. Any written or printed statements describing the lender's fair lending policies and/or procedures.
   f. Training materials related to fair lending issues including records of attendance.
2. **Lending Policies / Loan Volume**.
   a. Internal underwriting guidelines and lending policies for all consumer and commercial loan products.

      Comment: If guidelines or policies differ by branch or other geographic location, request copies of each variation.
   b. A description of any credit scoring system(s) in use now or during the exam period.

      Comment: Inquire as to whether a vendor or in-house system is used; the date of the last verification; the factors relied on to construct any in-house system and, if applicable, any judgmental criteria used in conjunction with the scoring system.
   c. Pricing policies for each loan product, and for both direct and indirect loans.

      Comment: The lender should be specifically asked whether its pricing policies for any loan products include the use of **"overages"**. The request should also ask whether the lender offers any **"sub-prime"** loan products for "B", "C" or "D" risk level customers or otherwise uses any form of **risk-based pricing**. A similar inquiry should be made regarding the use of any **cost-based pricing**. If any of these three forms are or have been in use since the last exam, the lender should provide pricing policy and practice details for each affected product, including the lender's criteria for differentiating between each risk or *cost* level. Regarding **indirect lending**, the lender should be asked to provide any forms of agreement (*including compensation*) with brokers/dealers, together with a description of the roles that both the lender and the dealer/broker play in **each stage** of the lending process.
   d. A description of each form of compensation plan for all lending personnel and managers.
   e. Advertising copy for all loan products.
   f. The most recent HMDA / LAR, including unreported data if available. Information should be provided on diskette if possible.

      Comment: The integrity of the institution's HMDA / LAR data should be verified prior to the pre-examination analysis. Verification should take place approximately two to three months prior to the on-site phase of the examination.
   g. Any existing loan registers for each non-HMDA loan product.

      Comment: Loan registers for the 3 month period preceding the date of the examination, together with any available lists of declined loan applicants for the same period should be requested. Registers/lists should contain, to the extent *available*, the complete name and address of loan applicants and applicable loan terms,

including loan amount, interest rate, fees, repayment schedule and collateral codes.

h. A description of any data bases maintained for each loan product, including a description of all data fields within the database.

i. Forms used in the application and credit evaluation process for each loan product.

   Comment: At a minimum, this request should include all types of credit applications, forms requesting financial information, underwriter worksheets, any form used for the collection of monitoring information, and any quality control or second review forms or worksheets.

j. Lists of service providers.

   Comment: Service providers may include: realtors, real estate developers, appraisers, home improvement contractors and private mortgage insurance companies. Request the full name and address and geographic area served by each provider. Also request documentation as to any fair lending requirements imposed on, or commitments required of, any of the lender's service providers.

k. Addresses of any Internet Site(s)

   Comment: Internet "Home Pages" or similar sites that a lender may install on the Internet may provide information concerning the availability of credit, or means for obtaining it. All such information would have to comply with the nondiscrimination requirements of the fair lending laws. Moreover, future enhancements to the Internet may include the capacity to conduct partial or complete credit transactions via that medium. Accordingly, it is important for examiners to review a lender's Internet sites to ensure that all of the information or procedures set forth therein are in compliance with any applicable provisions of the fair lending statutes and regulations.

3. **Community Information**.

   a. Demographic information prepared or used by the institution.

   b. Any fair lending complaints received and lender responses thereto.

Special Analyses

- **Disproportionate Adverse Impact**
- **Pre-Application Screening**
- **Marketing**

Disproportionate Adverse Impact Violations

When all five conditions below exist, consult within your agency whether to present the situation to the lender and solicit an explanation of the lender's business justification for the policy or criterion that appears to cause the disproportionate adverse impact. Note that condition 5 can be satisfied by **either** of two alternatives.

The contacts between examiners and lenders described in this section are information-gathering contacts within the context of the examination and are not intended to serve as the formal notices and opportunities for response that an agency's enforcement process might provide. Also, the five conditions are not intended as authoritative statements of the legal elements of a disproportionate adverse impact proof of discrimination; they are paraphrases intended to give examiners practical guidance on situations that call for more scrutiny and on what additional information is relevant.

Note: Even if it appears likely that a policy or criterion causes a disproportionate adverse impact on a prohibited basis (condition 3), do not proceed with this analysis if the policy or criterion is obviously related to predicting creditworthiness or to some other basic aspect of prudent lending, and there appears to be no equally effective alternative for it. Examples are reliance on credit reports or use of debt-to-income ratio.

Conditions

1. A specific policy or criterion is involved.

   The policy or criterion suspected of producing a disproportionate adverse impact on a prohibited basis must be clear enough that the nature of action to correct the situation can be determined.

   Note: Gross HMDA denial or approval rate disparities are not appropriate for disproportionate adverse impact analysis because they typically cannot be attributed to a specific policy or criterion. Similarly, a lender's policies of allowing employees to exercise discretion and to negotiate terms or conditions of credit can better be described as the **absence** of policies or criteria than as a situation in which a policy or criterion generates a disproportionate adverse impact. Broad discretion and vague standards raise concerns about discrimination, but examiners should focus on possible disparate **treatment**.

2. The policy or criterion on its stated terms is neutral for prohibited bases.

3. The disparity on a prohibited basis is significant.

   The difference between the rate at which prohibited basis group members are harmed or excluded by the policy or criterion and the rate for control group members must be large enough that it is unlikely that it could have occurred by chance. If there is reason to suspect a significant disproportionate adverse impact may exist, consult the supervisory office, compliance manager, district counsel, and/or compliance management department, as appropriate.

4. There is a causal relationship between the policy or criterion and the adverse result.

   The link between the policy or criterion and the harmful or exclusionary effect must not be speculative. It must be clear that changing or terminating the policy or criterion would reduce the disproportion in the adverse result.

5. **Either a or b:**

   a. The policy or criterion has no clear rationale, or appears to exist merely for convenience or to avoid a minimal expense, or is far removed from common sense or standard industry underwriting considerations or lending practices.

      The legal doctrine of disproportionate adverse impact says that the policy or criterion that causes the impact must be justified by "business necessity" if the lender is to avoid a violation. There is very little authoritative legal interpretation of that term with regard to lending, but that should not stop examiners from making the preliminary inquiries called for in these procedures. For example, the rationale is not clear for basing credit decisions on factors such as location of residence, income level (*per se* rather than relative to debt), and accounts with a finance company. If black applicants were denied loans significantly more frequently than white ones because they failed a lender's minimum income requirement, it would appear that the first four conditions plus 5a existed; therefore, the examiners should consult within their agency about obtaining the lender's response, as described in the next section below.

   b. **Alternatively**, even if there is a sound justification for the policy, it appears that there may be an equally effective alternative for accomplishing the same objective with a smaller disproportionate adverse impact.

      The law does not require a lender to abandon a policy or criterion that is clearly the most effective method of accomplishing a business objective. However, if an alternative that is approximately equally effective is available that would cause a less-severe impact, the policy or criterion in question will be a violation.

      At any stage of the analysis of possible disproportionate adverse impact, if there appears to be such an

alternative, and the first four conditions exist, consult within the agency how to evaluate whether the alternative would be equally effective and would cause a less-severe impact. If the conclusion is that it would, solicit a response from the lender, as described in the next section below.

Obtaining the lender's response

If the first four conditions plus either 5a or 5b appear to exist, consult within your agency about whether and how to inform the lender of the situation and solicit the lender's business justification. The communication with the lender should explain:

- The specific neutral policy or criterion that appears to cause a disproportionate adverse impact.
- How the examiners learned about the policy.
- How widely the examiners understand it to be implemented.
- How strictly they understand it to be applied.
- The prohibited basis on which the impact occurs.
- The magnitude of the impact.
- The nature of the injury to individuals.
- The data from which the impact was computed.

The communication should state that no violation exists if the policy or criterion is used because of business necessity *and* there is no alternative that would accomplish the lender's objective with a smaller disproportionate adverse impact. It should inform the lender that cost and profitability are factors the agency will consider in evaluating the lender's business necessity. It should ask the lender to describe any alternatives it considered before adopting the policy or criterion at issue.

Evaluating and following up on the response

The analyses of "business necessity" and "less discriminatory alternative" tend to converge because of the close relationship of the questions of what purpose the policy or criterion serves and whether it is the most effective means to accomplish that purpose.

Evaluate whether the lender's response persuasively contradicts the existence of the significant disparity or establishes a business justification. Consult the supervisory office, compliance manager, district counsel, and/or compliance management department, as appropriate.

Discriminatory pre-application screening

Obtain an explanation for any:

- Withdrawals by applicants in prohibited basis groups without documentation of customer intent to withdraw;
- Denials of applicants in prohibited basis groups without any documentation whether qualified; or
- On a prohibited basis, selectively quoting *strongly unfavorable* terms (for example, high fees or down payment requirements) to prospective applicants, or quoting *strongly unfavorable* terms to all prospective applicants but waiving such terms for control group applicants. (Evidence of this might be found in withdrawn or incomplete files.)

If the lender cannot explain the situations, examiners should consider obtaining authorization to contact the customers to verify the lender's description of the transactions. Information from the customer may help determine whether a violation occurred.

In some instances, such as possible "prescreening" of applicants by lender personnel, the results of the procedures discussed so far, including interviews with customers, may be inconclusive in determining whether a violation has occurred. In those cases, examiners should, if authorized by their agency, consult with management regarding the possible use of "testers" who would pose as apparently similarly situated applicants, differing only as to race or other applicable prohibited basis characteristic, to determine and compare how the lender treats them in the application process.

Possible discriminatory marketing

1. Obtain full documentation of the nature and extent, together with management's explanation, of any:
   - Prohibited basis limitations stated in advertisements;
   - Code words in advertisements that convey prohibited limitations; or
   - Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.
2. Obtain full documentation as to the nature and extent, together with management's explanation, for any situation in which the lender, despite the availability of other options in the market:
   - Advertises only in media serving nonminority areas of the market;
   - Markets through brokers or other agents that the lender knows, or could reasonably be expected to know, to serve only one racial or ethnic group in the market; or
   - Utilizes mailing or other distribution lists or other marketing techniques for pre- screened or other offerings of residential loan products* that:

- Explicitly exclude groups of prospective borrowers on a prohibited basis; or
- Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution's marketing area that have demonstrably higher percentages of minority group residents than does the remainder of the marketing area, but which have income and other credit-related characteristics similar to the geographies that were targeted for marketing.

  **Note*: Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FHAct. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FHAct.

3. Evaluate management's response particularly with regard to the credibility of any nondiscriminatory reasons offered as explanations for any of the foregoing practices. Refer to **Evaluating Responses to Evidence of Disparate Treatment** elsewhere in the **Appendix** for guidance.

(This page intentionally left blank.)

Streamlining the Examination

Institutions may find it advantageous to conduct self-tests or self-evaluations to measure or monitor their compliance with ECOA and Regulation B. A self-test is any program, practice or study that is designed and specifically used to assess the institution's compliance with fair lending laws that creates data not available or derived from loan, application or other records related to credit transactions (12 CFR 202.15(b)(1) and 24 CFR 100.140-100.148). For example, using testers to determine whether there is disparate treatment in the pre-application stage of credit shopping is a self-test. The information set forth in 12 CFR 202.15(b)(2) and 24 CFR 100.142(a) is privileged unless an institution voluntarily discloses the report or results or otherwise forfeits the privilege. A self-evaluation, while generally having the same purpose as a self-test, does not create any new data or factual information, but uses data readily available in loan or application files and other records used in credit transactions and, therefore, does not meet the self-test definition.

Examiners should not request any information privileged under 12 CFR 202.15(b)(2) and 24 CFR 100.142(a), related to self-tests. If the institution discloses the results of any self-tests, or has performed any self-evaluations, and examiners can confirm the reliability and appropriateness of the self-tests or -evaluations (or even parts of them), they need not repeat those tasks.

Note: In the following discussion of "Streamlining the Examination," the term self-evaluation will also include self-tests where the institution has voluntarily disclosed the report or results.

If the institution has performed a self-evaluation of any of the product(s) selected for examination, obtain a copy thereof and proceed through the remaining steps of this section on Streamlining the Examination. If the institution has conducted a self-evaluation of a product not selected in the scope of the examination, consider whether the product evaluated by the institution is appropriate under the scoping guidelines to substitute for another product that was selected. If such a substitution is considered appropriate, obtain the results of the self-evaluation for the substituted product and proceed through the remaining steps of this section.

Determine whether the research and analysis of the planned examination would duplicate the institution's own efforts. If the answers to Questions A and B below are both **Yes**, each successive **Yes** answer to Questions C through L indicates that the institution's work up to that point can serve as a basis for eliminating examination steps.

If the answer to either Question A or B is **No**, the self-evaluation cannot serve as a basis for eliminating examination steps. However, examiners should still evaluate the self-evaluation to the degree possible in light of the remaining questions and communicate the findings to the lender so that it can improve its self-evaluation process.

A. Did the transactions covered by the self-evaluation occur not longer ago than two years prior to the examination? *If the self-evaluation covered more than two years prior to the examination* incorporate only results from transactions in the most recent two years.

B. Did it cover the same product, prohibited basis, decision center, and stage of the lending process (for example, underwriting, setting of loan terms) as the planned examination?

C. Did the self-evaluation include comparative file review?

   Note: One type of "comparative file review" is statistical modeling to determine whether similar control group and prohibited basis group applicants were treated similarly. If a lender offers self-evaluation results based on a statistical model, consult appropriately within your agency.

D. Were control and prohibited basis groups defined accurately and consistently with ECOA and/or the FHAct?

E. Were the transactions selected for the self-evaluation chosen so as to focus on marginal applicants or, in the alternative, selected randomly?

F. Were the data abstracted from files accurate? Were those data actually relied on by the credit decision makers at the time of the decisions?

   To answer these two questions and Question G below, for the institution's control group sample and each of its prohibited basis group samples, request to review 10% (but not more than 50 for each group) of the transactions covered by the self-evaluation. For example, if the institution's self-evaluation reviewed 250 white and 75 black transactions, plan to verify the data for 25 white and seven black transactions.

G. Did the 10% sample reviewed for Question F also show that customer assistance and lender judgment that assisted or enabled applicants to qualify were recorded systematically and accurately and were compared for differences on any prohibited bases?

H. Were prohibited basis group applicants' qualifications related to the underwriting factor in question compared to corresponding qualifications of control group approvals? Specifically, for self-evaluations of approve/deny decisions, were the denied applicants' qualifications related to the stated reason for denial compared to the corresponding qualifications for approved applicants?

I. Did the self-evaluation sample cover at least as many transactions at the initial stage of review as examiners

would initially have reviewed using the sampling guidance in these procedures?

If the lender's samples are significantly smaller than those in the sampling guidance but its methodology otherwise is sound, review additional transactions until the numbers of reviewed control group and prohibited basis group transactions equal the minimums for the initial stage of review in the sampling guidance.

J. Did the self-evaluation identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?

K Were explanations solicited for such instances from the persons responsible for the decisions?

L. Were the reasons cited by credit decision makers to justify or explain instances of apparent disparate treatment supported by legitimate, persuasive facts or reasoning?

If the questions above are answered **Yes**, incorporate the findings of the self-evaluation (whether supporting compliance or violations) into the examination findings. Indicate that those findings are based on verified data from the institution's self-evaluation. In addition, consult appropriately within the agency regarding whether or not to conduct corroborative file analyses in addition to those performed by the lender.

If not all of the questions in the section above are answered **Yes**, resume the examination procedures at the point where the lender's reliable work would not be duplicated. In other words, use the reliable portion of the self-evaluation and correspondingly reduce independent comparative file review by examiners. For example, if the institution conducted a comparative file review that compared applicants' qualifications without taking account of the reasons they were denied, the examiners could use the qualification data abstracted by the institution (if accurate) but would have to construct independent comparisons structured around the reasons for denial.

FDIC Examination Procedures for "Low-Risk" Institutions

Many institutions exhibit little or no discrimination risk. Typically, these institutions are stable community banks that are often located in suburban or rural areas where the demographics show a very low percentage of minority residents. These institutions usually offer standard products, and many of them are predominantly commercial or agricultural lenders. There is often the possibility of conducting a comparative analysis on the basis of gender. However, in some cases it may not be possible to conduct a comparative analysis on the basis of race, national origin, or gender that meets the minimum numbers of the sample size tables for either underwriting or terms and conditions. In other cases, the only possible comparative analysis may have been conducted in the previous examination with no concerns identified, and the lending policies and staff implementing them have not changed.

In such cases, there is no risk sufficient to warrant the establishment of a focal point for the on-site examination. The examiner shall prepare a written explanation of why no comparative analysis is feasible or why the Corporation should rely on a comparative analysis conducted in a previous examination. If the examiner obtains the documented concurrence of the Field Office Supervisor, a comparative analysis is not required.

NOTE: A review of underwriting and pricing policies should be conducted even when no comparative analysis is possible, unless previous examinations have established that such policies do not contain provisions that are discriminatory on their face.

References

The following can all be found at the fair lending webpage:
http://fdic01/division/dsc/cra/fairlending/flrr.html

- Equal Credit Opportunity Act
- Regulation B (including Supplement I, Official Staff Interpretations)
- Fair Housing Act
- 12 CFR Part 338
- Home Mortgage Disclosure Act
- Regulation C

The following can be found at the fair lending standard operating procedures webpage:
http://fdic01/division/dsc/cra/fairlending/flsop.html

- Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement
- Policy Statement on Discrimination in Lending

DSC RD Memo 04-017: Consultation Policy and Procedures for Compliance Examination Issues
http://fdic01/division/dsc/memos/memos/direct/04-017.pdf

FIL 02-09: Guidance on Avoiding Violations of the Spousal Signatures Provisions of Regulation B
http://www.fdic.gov/news/news/financial/2002/fil0209.html

FIL 06-04: Spousal Signature Provision of Regulation B
http://www.fdic.gov/news/news/financial/2004/fil0604a.html

FIL 14-99: Interagency Fair Lending Examination Procedures
http://fdic01/division/dsc/cra/fairlending/examref.html

DSC RD Memo 05-006: Guidance on Considering the new HMDA Pricing Info when conducting Fair Lending examinations.
http://fdic01/division/dsc/memos/memos/6000/05-006.pdf

FIL 06-022: Consumer Credit Protection Act and Fair Lending Prohibition Against Discrimination in Credit Transactions
http://www.fdic.gov/news/news/financial/2006/fil06022.html

Job Aids

Fair Lending Discussion Board
http://wasiis102p/dcaqc/

Fair Lending Exam Tools
http://fdic01/division/dsc/cra/fairlending/examtools.html

- Underwriter Interview Guide
- Terms and Conditions Interview Guide
- Fair Lending Spreadsheet Examples
- Workpaper Requirement for a Fair Lending Examination Memo

(This page intentionally left blank.)

V. Compliance Lending Issues

Contents

Truth in Lending Act **V-1.1**

Introduction V-1.1
Format of Regulation Z V-1.1
Subpart A—General V-1.2
Determination of Finance Charge and APR V-1.3
Subpart B—Open-End Credit V-1.8
Annual Percentage Rate (Open-End Credit) V-1.9
Subpart C—Closed-End Credit V-1.10
Subpart D—Miscellaneous V-1.19
Subpart E—Special Rules for Certain Home Mortgage Transactions V-1.21
Subpart F-Electronic Communication V-1.21
Specific Defenses §108 Defense Against Civil, Criminal, andAdministrative Actions V-1.22
Additional Defenses Against Civil Actions V-1.22
Statute of Limitations §108 and §130 V-1.22
Rescission Rights (Open-End and Closed-End Credit) §226.15 and §226.23 V-1.23
Examination Objectives V-1.23
Examination Procedures V-1.23
References V-1.35

Determining Whether TIL Restitution is Required **V-2.1**

Overview V-2.1
Legal Requirements V-2.1
Procedures for Making a Request V-2.2
Process for Making Restitution V-2.2
Determining Whether a Pattern or Practice Exists V-2.2
References V-2.3

Real Estate Settlement Procedures Act (RESPA) **V-3.1**

Introduction V-3.1
Regulation Overview V-3.1
Examination Objectives V-3.7
Examination Procedures V-3.7
References V-3.16
Job Aids V-3.16

Homeownership Counseling Act **V-4.1**

Introduction V-4.1
Statutory Overview V-4.1
Requirements V-4.1
Definitions V-4.1
Examination Objective V-4.1
Examination Procedures V-4.1
Examination Checklist V-4.2
References V-4.2

Homeowners Protection Act **V-5.1**
Introduction V-5.1
Regulation Overview V-5.1
Cancellation and Termination of PMI for Non High Risk Residential Mortgage Transactions V-5.1
Exceptions to Cancellation and Termination Provisions for High Risk Residential Mortgage Transactions V-5.2
Basic Disclosure and Notice Requirements Applicable to Residential Mortgage Transactions and Residential Mortgages V-5.3
Notification Upon Cancellation or Termination of PMI Relating to Residential Mortgage Transactions V-5.4
Disclosure Requirements for Lender-Paid Mortgage Insurance V-5.4
Fees for Disclosures V-5.5
Civil Liability V-5.5
Enforcement V-5.5
Examination Objectives V-5.6
Examination Procedures V-5.6
Conclusions V-5.7
References V-5.7
Job Aids V-5.8

Flood Disaster Protection **V-6.1**
Introduction V-6.1
Flood Insurance Requirements for Lending Institutions V-6.2
Penalties and Liabilities V-6.7
Federal Emergency Management Agency (FEMA) V-6.8
Examination Objectives V-6.8
Examination Procedures V-6.8
FDPA Examination Checklist V-6.9
FDPA Model Worksheet V-6.12
References V-6.16

Equal Credit Opportunity Act (ECOA) **V-7.1**
Introduction V-7.1
Examination Procedures V-7.1
Technical Compliance Checklist V-7.1
References V-7.11
Job Aids V-7.11

Fair Housing Act (FHAct) **V-8.1**
Overview V-8.1
Background and Introduction V-8.1
Examination Procedures V-8.1
Technical Compliance Checklist V-8.1
References V-8.2
Job Aids V-8.2

Home Mortgage Disclosure Act **V-9.1**
Introduction V-9.1
Applicability V-9.1
Compilation of Loan Data V-9.2
Excluded Data V-9.3
Reporting Format V-9.3
Disclosure V-9.4
Examination Objectives V-9.5
Examination Procedures V-9.5
Examination Conclusions V-9.8
References V-9.8
Job Aids V-9.9
Examination Checklist V-9.11
Consumer Leasing **V-10.1**
Introduction V-10.1
General Disclosure Requirements V-10.2
Advertising V-10.2
Limits on Balloon Payments V-10.2
Penalties and Liability V-10.2
Record Retention V-10.2
Examination Objectives V-10.2
Examination Procedures V-10.3
References V-10.4
Job Aids V-10.4

(This page intentionally left blank.)

Truth in Lending Act[1]

Introduction

The Truth in Lending Act (TILA), 15 USC 1601 et seq., was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Pub. L. 90-321). The TILA, implemented by Regulation Z (12 CFR 226), became effective July 1, 1969.

The TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to the TILA and Regulation Z were made by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, the Home Equity Loan Consumer Protection Act of 1988.

Regulation Z also was amended to implement §1204 of the Competitive Equality Banking Act of 1987, and in 1988, to include adjustable rate mortgage loan disclosure requirements. All consumer leasing provisions were deleted from Regulation Z in 1981 and transferred to Regulation M (12 CFR 213).

The Home Ownership and Equity Protection Act of 1994 amended TILA. The law imposed new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The law also included new disclosure requirements to assist consumers in comparing the costs and other material considerations involved in a reverse mortgage transaction and authorized the Federal Reserve Board to prohibit specific acts and practices in connection with mortgage transactions. Regulation Z was amended[2] to implement these legislative changes to TILA.

The TILA amendments of 1995 dealt primarily with tolerances for real estate secured credit. Regulation Z was amended on September 14, 1996, to incorporate changes to the TILA. Specifically, the revisions limit lenders' liability for disclosure errors in real estate secured loans consummated after September 30, 1995. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 further amended TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

Format of Regulation Z

The disclosure rules creditors must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.

Subpart A (§226.1 through §226.4) of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.

Subpart B (§226.5 through §226.16) of the regulation contains rules for disclosures for home-equity loans, credit and charge card accounts, and other open-end credit.

Subpart B also covers rules for resolving billing errors, calculating annual percentage rates, credit balances, and advertising open-end credit. Special rules apply to credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder's indebtedness. Additional special rules apply to home-equity lines of credit, such as certain prohibitions against closing accounts or changing account terms.

Subpart C (§226.17 through §226.24) includes provisions for closed-end credit. Residential mortgage transactions, demand loans, and installment credit contracts, including direct loans by banks and purchased dealer paper, are included in the closed-end credit category. Subpart C also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating annual percentage rates, and advertising closed-end credit.

Subpart D (§226.25 through §226.30), which applies to both open-end and closed-end credit, sets forth the duty of creditors to retain evidence of compliance with the regulation. It also clarifies the relationship between the regulation and state law, and requires creditors to set a cap for variable rate transactions secured by a consumer's dwelling.

Subpart E (§226.31 through §226.34) applies to certain home mortgage transactions including high-cost, closed-end mortgages and reverse mortgages. It requires additional disclosures and provides limitations for certain home mortgage transactions having rates or fees above a certain percentage or amount, and prohibits specific acts and practices in connection with those loans. Subpart E also includes disclosure requirements for reverse mortgage transactions (open-end and closed-end credit).

Subpart F (§226.36) contains the requirements for electronic communications. These provisions relate to the requirements of the E-Sign Act regarding the electronic delivery of required disclosures.

The appendices to the regulation set forth model forms and clauses that creditors may use when providing open-end and closed-end disclosures. The appendices contain detailed rules for calculating the APR for open-end credit (appendix F) and closed-end credit (appendixes D and J). The last two

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 03-033: Approved TILA Examination Procedures.

[2] 60 FR 15463, March 24, 1995, and 66 FR 65604, December 20, 2001

appendixes (appendixes K and L) provide total annual loan cost rate computations and assumed loan periods for reverse mortgage transactions.

Official staff interpretations of the regulation are published in a commentary that is normally updated annually in March. Good faith compliance with the commentary protects creditors from civil liability under the act. In addition, the commentary includes mandates, which are not necessarily explicit in Regulation Z, on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

NOTE: The following narrative does not encompass all the sections of Regulation Z, but rather highlights areas that have caused the most problems with the calculation of the finance charge and the calculation of the annual percentage rate.

Subpart A—General

Purpose of the TILA and Regulation Z

The Truth in Lending Act is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, the act is designed to:

- Protect consumers against inaccurate and unfair credit billing and credit card practices;
- Provide consumers with rescission rights;
- Provide for rate caps on certain dwelling-secured loans; and
- Impose limitations on home equity lines of credit and certain closed-end home mortgages.

The TILA and Regulation Z do not, however, tell financial institutions how much interest they may charge or whether they must grant a consumer a loan.

Summary of Coverage Considerations §226.1 & §226.2

Lenders must carefully consider several factors when deciding whether a loan requires Truth in Lending disclosures or is subject to other Regulation Z requirements. The coverage considerations under Regulation Z are addressed in more detail in the commentary to Regulation Z. For example, broad coverage considerations are included under §226.1(c) of the regulation and relevant definitions appear in §226.2.

Exempt Transactions §226.3

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);
- Credit in excess of $25 thousand not secured by real or personal property used as the principal dwelling of the consumer;
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;
- Home fuel budget plans; and
- Certain student loan programs.

NOTE: If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the card holder must not be held liable for more than $50.00 for the unauthorized use of the card.

When determining whether credit is for consumer purposes, the creditor must evaluate all of the following:

- Any statement obtained from the consumer describing the purpose of the proceeds.
  - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
  - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
  - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds, could be insufficient evidence that the loan did not have a consumer purpose.
- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money

borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.

- The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5,000,000 real estate transaction, that might indicate a business purpose.
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the financial institution and compliance with the law.

Determination of Finance Charge and APR

Finance Charge (Open-End and Closed-End Credit) §226.4

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by the TILA.

The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the financial institution either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always includes any interest charges and often, other charges. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge (§226.4(b)).

Accuracy Tolerances (Closed-End Credit) §226.18(d) & §226.23(h)

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in the TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge were legally accurate, it would not be subject to reimbursement.

Under TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors. However, both TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

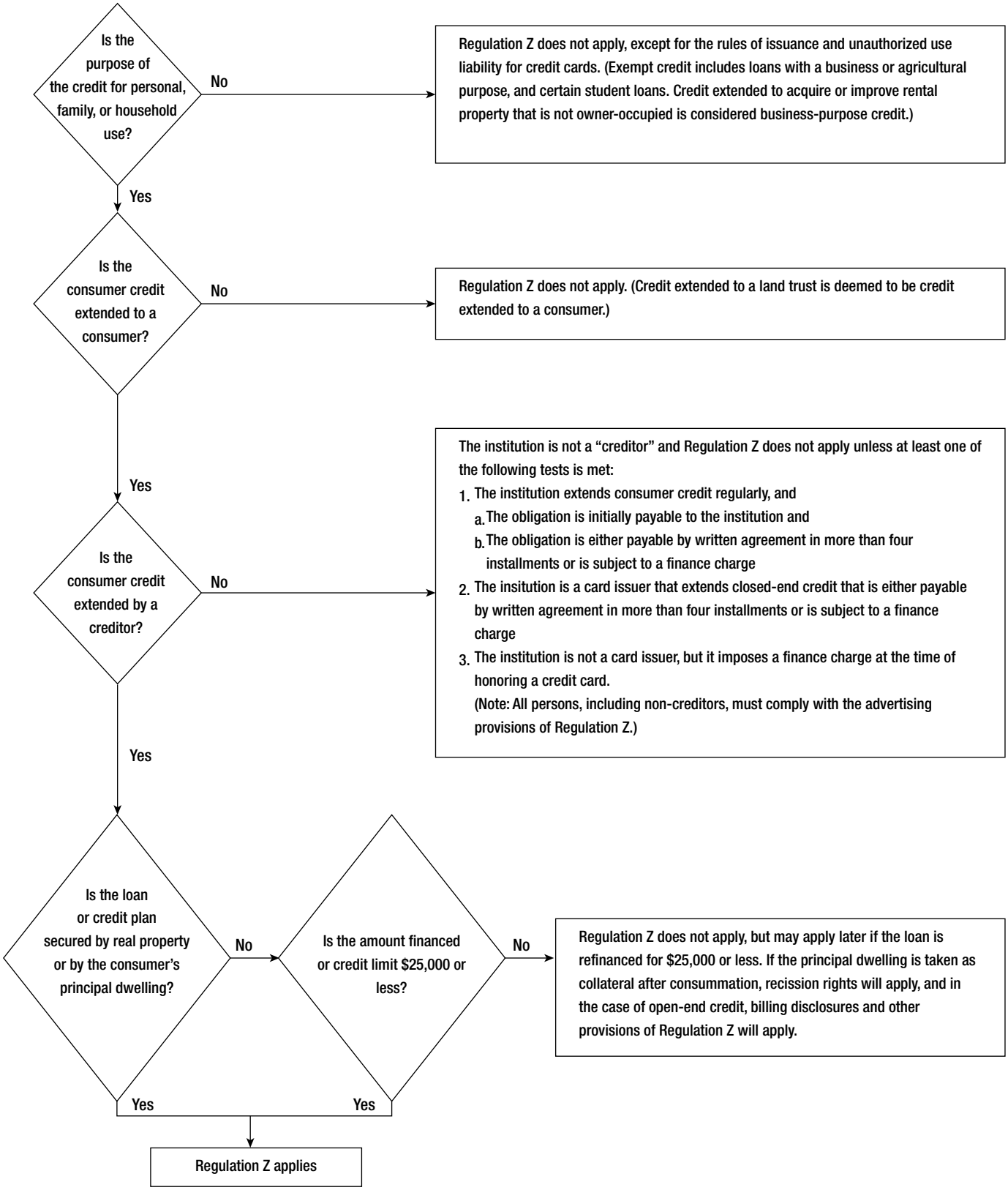
Tolerances for the finance charge in a closed-end transaction are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. Tolerances for certain transactions consummated on or after September 30, 1995 are noted below.

- Credit secured by real property or a dwelling (closed-end credit only):
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $100.
  - Overstatements are not violations.
- Rescission rights after the three-business-day rescission period (closed-end credit only):
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended.
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than 1 percent of the credit extended for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different financial institution. (This excludes high cost mortgage loans subject to §226.32, transactions in which there are new advances, and new consolidations.)
- Rescission rights in foreclosure:
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $35.
  - Overstatements are not considered violations.
  - The consumer can rescind if a mortgage broker fee is not included as a finance charge.

NOTE: Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than $35.

See the "Finance Charge Tolerances" charts within these examination procedures for help in determining appropriate finance charge tolerances.

Coverage Considerations Under Regulation Z



Calculating the Finance Charge (Closed-End Credit)

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the financial institution requires use of the third party. Charges imposed by settlement or closing agents are finance charges if the bank requires the specific service that gave rise to the charge and the charge is not otherwise excluded. The "Finance Charge Tolerances" charts (pages V-1.14 to V-1.16) briefly summarize the rules that must be considered.

Prepaid Finance Charges §226.18(b)

A prepaid finance charge is any finance charge paid separately to the financial institution or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time.

Prepaid finance charges effectively reduce the amount of funds available for the consumer's use, usually before or at the time the transaction is consummated.

Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration, private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC), in non-real-estate transactions, and credit report fees.

Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the debt instrument as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

Instructions for the Finance Charge Chart (page V-1.6)

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party. Charges imposed on the consumer by a settlement agent are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge.

Immediately below the finance charge definition, the chart presents five captions applicable to determining whether a loan related charge is a finance charge.

The first caption is charges always included. This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

The second caption, charges included unless conditions are met, focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, conditions, focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor's option, third party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of the application fee is optional.

The fourth caption, charges not included, identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a consumer loan is secured by a vacant lot or commercial real estate, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, charges never included, lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

Annual Percentage Rate Definition §226.22 (Closed-End Credit)

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by the TILA.

Finance Charge Chart

Finance Charge – Dollar cost of Consumer Credit: It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.

Charges Always included	Charges Included Unless Conditions are Met	Conditions (Any loan)	Charges Not Included (Residential Mortgage transactions and loans secured by real estate)	Charges Never Included
Interest	Premiums for credit life, A&H, or loss of income insurance →	Insurance not required, disclosures are made, and consumer authorizes	Fees for title insurance, title examinations, property survey, etc.	Charges payable in a comparable cash transaction
Transaction fees	Debt cancellation fees →	Coverage not required, disclosures are made, and consumer authorizes	Fees for preparing loan documents, mortgages, and other settlement documents	Fees for unanticiparted late payments
Loan origination fees Consumer points	Premiums for property or liability insurance →	Consumer selects insurance company and disclosures are made	Amounts required to be payed into escrow, if not otherwise included in the finance charge	Overdraft fees not agreed to in writing
Credit guarantee insurance premiums	Premiums for vendor's single interest (VSI) insurance →	Insurer waives right of subrogation, consumer selects insurance company and disclosures are made	Notary fees	Seller's points
Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer	Security interest charges (filing fees), insurance in lieu of filing fees and certain notary fees →	The fee is for lien purposes, prescribed by law, payable to a third public official and is itemized and disclosed	Pre-consummation flood and pest inspection fees	Participation in membership fees
Discounts for inducing payment by means other than credit	Charges imposed by third parties →	Use of the third party is not required to obtain loan and creditor does not retain the charge	Appraisal and credit report fees	Discount offered by seller to induce payment by cash or other means not involving the use of a credit card
Mortgage broker fees	Charges imposed by third party closing agents →	Creditor does not require and does not retain the fee for the particular service		Interest forfeited as a result of interest reduction required by law
Other examples: Fee for preparing TILA disclosures, real estate construction loan inspection fees, fees for post-consummation tax or flood service policy, required credit life insurance charges	Appraisal and credit report fees →	Application fees, if charged to all applicants, are not finance charges. Application fees may include appraisal or credit report fees.		Charges absorbed by the creditor as a cost of doing business

The value of a closed-end credit APR must be disclosed as a single rate only, whether the loan has a single interest rate, a variable interest rate, a discounted variable interest rate, or graduated payments based on separate interest rates (step rates), and it must appear with the segregated disclosures. Segregated disclosures are grouped together and do not contain any information not directly related to the disclosures required under §226.18.

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an "interest" rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of $5,000 and 36 equal monthly payments of $166.07 each. It is 13.26 percent on a loan with an amount financed of $4,500 and 35 equal monthly payments of $152.18 each and final payment of $152.22. In both cases the finance charge is $978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge. It relates the amount and timing of value received by the consumer to the amount and timing of payments made.

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. If the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a $100,000 residential mortgage loan, the loan amount is $100,000, but the amount financed would be $100,000 less the $1,000 loan fee, or $99,000.
- The finance charge, which is not necessarily equivalent to the total interest amount.
  - If the consumer must pay a $25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the $25 credit report fee.
  - If the consumer must pay a $25 credit report fee for a home improvement loan secured by real property, the credit report fee may be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
  - Interest, which is defined by state or other federal law, is not defined by Regulation Z.
- The payment schedule, which does not necessarily include only principal and interest (P + I) payments.
  - If the consumer borrows $2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be $115.87, if all months are considered equal, and the amount financed would be $2,500. If the consumer's payments are increased by $2.00 a month to pay a non-financed $50 loan fee during the life of the loan, the amount financed would remain at $2,500 but the payment schedule would be increased to $117.87 a month, the finance charge would increase by $50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the $50 loan fee as interest.
  - If the loan above has 55 days to the first payment and the consumer prepays interest at consummation ($24.31 to cover the first 25 days), the amount financed would be $2,500 - $24.31, or $2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the $2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (*see* §226.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

Financial institutions may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78's (if permitted by law) or some other method. Unless the financial institution's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over actual days (even that is important only for determining the accuracy of the payment schedule), it is not relevant in calculating an APR, since an APR is not an interest rate (as that term is commonly used under state or other law). Since the APR normally needs not rely on the internal accrual systems of a bank, it always may be computed after the loan terms have been agreed upon (as long as it is disclosed before actual consummation of the transaction).

Special Requirements for Calculating the Finance Charge and APR

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms "finance charge" and "annual percentage rate" be disclosed more conspicuously than any other required disclosure. The finance charge and APR, more than any other disclosures, enable consumers to understand the cost of the credit and to comparison shop for credit. A creditor's failure to disclose those values accurately can result in significant monetary damages to the creditor, either from a class action lawsuit or from a regulatory agency's order to reimburse consumers for violations of law.

NOTE: If an annual percentage rate or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- *The error resulted from a corresponding error in a calculation tool used in good faith by the financial institution.*
- *Upon discovery of the error, the financial institution promptly discontinues use of that calculation tool for disclosure purposes.*
- *The financial institution notifies the Federal Reserve Board in writing of the error in the calculation tool.*

When a financial institution claims a calculation tool was used in good faith, the financial institution assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation. For example, the financial institution might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The financial institution might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

Subpart B—Open-End Credit

The following is not a complete discussion of the open-end credit requirements in the Truth in Lending Act. Instead, the information provided below is offered to clarify otherwise confusing terms and requirements. Refer to §226.5 through §226.16 and related commentary for a more thorough understanding of the Act.

Finance Charge (Open-End Credit) §226.6(a)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed.

Determining the Balance and Computing the Finance Charge

The examiner must know how to compute the balance to which the periodic rate is applied. Common methods used are the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- Previous balance method. The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.
- Daily balance method. A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.
- Average daily balance method. The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, financial institutions have other ways of calculating the balance to which the periodic rate is applied. By reading the financial institution's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the financial institution to verify the explanation disclosed. Any inability to understand the disclosed explanation should be discussed with management, who should be reminded of Regulation Z's requirement that disclosures be clear and conspicuous.

When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments must be disclosed.

If the financial institution uses the daily balance method and applies a single daily periodic rate, disclosure of the balance to which the rate was applied may be stated as any of the following:

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.

- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for those days on which the balance changed.
- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.
- The average daily balance during the billing cycle. If this is stated, however, the financial institution must explain somewhere on the periodic statement or in an accompanying document that the finance charge is or may be determined by multiplying the average daily balance by the number of days in the billing cycle, rather than by multiplying the product by the daily periodic rate.

If the financial institution uses the daily balance method, but applies two or more daily periodic rates, the sum of the daily balances may not be used. Acceptable ways of disclosing the balances include:

- A balance for each day in the billing cycle;
- A balance for each day in the billing cycle on which the balance in the account changes; or
- Two or more average daily balances. If the average daily balances are stated, the financial institution shall indicate on the periodic statement or in an accompanying document that the finance charge is or may be determined by multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varies, by multiplying the number of days that the applicable rate was in effect), multiplying each of the results by the applicable daily periodic rate, and adding the products together.

In explaining the method used to find the balance on which the finance charge is computed, the financial institution need not reveal how it allocates payments or credits. That information may be disclosed as additional information, but all required information must be clear and conspicuous.

Finance Charge Resulting from Two or More Periodic Rates

Some financial institutions use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the financial institution must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed. It is not necessary, however, to break the finance charge into separate components based on the different rates.

Annual Percentage Rate (Open-End Credit)

Accuracy Tolerance §226.14

The disclosed annual percentage rate (APR) on an open-end credit account is accurate if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z.

Determination of APR

The regulation states two basic methods for determining the APR in open-end credit transactions. The first involves multiplying each periodic rate by the number of periods in a year. This method is used for disclosing:

- The corresponding APR in the initial disclosures;
- The corresponding APR on periodic statements;
- The APR in early disclosures for credit card accounts;
- The APR in early disclosures for home-equity plans;
- The APR in advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective. In other words, it does not involve any particular finance charge or periodic balance.

The second method is the quotient method, used in computing the APR for periodic statements. The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the historical rate, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle.

If the finance charge is determined by applying one or more periodic rates to a balance, and does not include any of the charges just mentioned, the financial institution may compute the historical rate using the quotient method. In that method, the financial institution divides the total finance charge for the cycle by the sum of the balances to which the periodic rates were applied and multiplies the quotient (expressed as a percentage) by the number of cycles in a year.

Alternatively, the financial institution may use the method for computing the corresponding APR. In that method, the financial institution multiplies each periodic rate by the number of periods in one year. If the finance charge includes a minimum, fixed, or transaction charge, the financial institution must use the appropriate variation of the quotient method.

The regulation also contains a computation rule for small finance charges. If the finance charge includes a minimum, fixed, or transaction charge, and the total finance charge for the cycle does not exceed 50 cents, the financial institution may multiply each applicable periodic rate by the number of periods in a year to compute the APR.

Optional calculation methods also are provided for accounts involving daily periodic rates. (§226.14(d))

Brief Outline for Open-End Credit APR Calculations on Periodic Statements

NOTE: Assume monthly billing cycles for each of the calculations below.

I. APR when finance charge is determined solely by applying one or more periodic rates:
   A. Monthly periodic rates:
      1. Monthly rate x 12 = APR
         or
      2. (Total finance charge / applicable balance[3]) x 12 = APR

         This calculation may be used when different rates apply to different balances.
   B. Daily periodic rates:
      1. Daily rate x 365 = APR
         or
      2. (Total finance charge / average daily balance) x 12 = APR
         or
      3. (Total finance charge / sum of balances) x 365 = APR

II. APR when finance charge includes a minimum, fixed, or other charge that is not calculated using a periodic rate (and does not include charges related to a specific transaction, like cash advance fees):
   A. Monthly periodic rates:
      1. (Total finance charge / amount of applicable balance) x 12 = APR[4]
   B. Daily periodic rates
      1. (Total finance charge / amount of applicable balance) X 365 = APR
      2. The following may be used if at least a portion of the finance charge is determined by the application of a daily periodic rate. If not, use the formula above.
         a. (Total finance charge / average daily balance) x 12 = APR
            or
         b. (Total finance charge / sum of balances) x 365 = APR
   C. Monthly and daily periodic rates
      1. If the finance charge imposed during the billing cycle does not exceed $.50 for a monthly or longer billing cycles (or pro rata part of $.50 for a billing cycle shorter than monthly), the APR may be calculated by multiplying the monthly rate by 12 or the daily rate by 365.

III. If the total finance charge included a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also included any other minimum, fixed, or other charge not calculated using a periodic rate, then the monthly and daily APRs are calculated as follows: (total finance charge / the greater of: the transaction amounts that created the transaction fees or the sum of the balances and other amounts on which a finance charge was imposed during the billing cycle[5]) X number of billing cycles in a year (12) = APR[6]

Subpart C—Closed-End Credit

The following is not a complete discussion of the closed-end credit requirements in the Truth in Lending Act. Instead, the information provided below is offered to clarify otherwise confusing terms and requirements. Refer to §226.17 through §226.24 and related commentary for a more thorough understanding of the Act.

Finance Charge (Closed-End Credit) §226.17(a)

The aggregate total amount of the finance charge must be disclosed. Each finance charge imposed need not be individually itemized and must not be itemized with the segregated disclosures.

Annual Percentage Rate (Closed-End Credit) §226.22

Accuracy Tolerances

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (§226.22(a)(2)).
- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (§226.22(a)(3)).
- Mortgage transactions, if it is within one-eighth of 1 percentage point for regular transactions or one-quarter of 1 percentage point for irregular transactions and:

[3] If zero, no APR can be determined. The amount of applicable balance is the balance calculation method and may include the average daily balance, adjusted balance, or previous balance method.

[4] Loan fees, points, or similar finance charges that related to the opening of the account must not be included in the calculation of the APR.

[5] The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. Where a portion of the finance charge is determined by application of one or more daily periodic rates, sum of the balances also means the average of daily balances.

[6] Cannot be less than the highest periodic rate applied, expressed as an APR.

1. The rate results from the disclosed finance charge; and
2. The disclosed finance charge would be considered accurate under §226.18(d)(1) or §226.23(g) or (h) (§226.22(a)(4)).

NOTE: There is an additional tolerance for mortgage loans when the disclosed finance charge is calculated incorrectly but is considered accurate under §226.18(d)(1) or §226.23(g) or (h) (§226.22(a)(5)).

Construction Loans §226.17(c)(6) and Appendix D

Construction and certain other multiple advance loans pose special problems in computing the finance charge and APR. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure.

At its option, the financial institution may rely on the representations of other parties to acquire necessary information (for example, it might look to the consumer for the dates of advances). In addition, if either the amounts or dates of advances are unknown (even if some of them are known), the financial institution may, at its option, use appendix D to the regulation to make calculations and disclosures. The finance charge and payment schedule obtained through appendix D may be used with volume one of the Federal Reserve Board's APR tables or with any other appropriate computation tool to determine the APR. If the financial institution elects not to use appendix D, or if appendix D cannot be applied to a loan (e.g., appendix D does not apply to a combined construction-permanent loan if the payments for the permanent loan begin during the construction period), the financial institution must make its estimates under §226.17(c)(2) and calculate the APR using multiple advance formulas.

On loans involving a series of advances under an agreement to extend credit up to a certain amount, a financial institution may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided before consummation.

In a transaction that finances the construction of a dwelling that may or will be permanently financed by the same financial institution, the construction-permanent financing phases may be disclosed in one of three ways listed below.

- As a single transaction, with one disclosure combining both phases.
- As two separate transactions, with one disclosure for each phase.
- As more than two transactions, with one disclosure for each advance and one for the permanent financing phase.

If two or more disclosures are furnished, buyer's points or similar amounts imposed on the consumer may be allocated among the transactions in any manner the financial institution chooses, as long as the charges are not applied more than once. In addition, if the financial institution chooses to give two sets of disclosures and the consumer is obligated for both construction and permanent phases at the outset, both sets of disclosures must be given to the consumer initially, before consummation of each transaction occurs.

If the creditor requires interest reserves for construction loans, special appendix D rules apply that can make the disclosure calculations quite complicated. The amount of interest reserves included in the commitment amount must not be treated as a prepaid finance charge.

If the lender uses appendix D for construction-only loans with required interest reserves, the lender must estimate construction interest using the interest reserve formula in appendix D. The lender's own interest reserve values must be completely disregarded for disclosure purposes.

If the lender uses appendix D for combination construction-permanent loans, the calculations can be much more complex. Appendix D is used to estimate the construction interest, which is then measured against the lender's contractual interest reserves.

If the interest reserve portion of the lender's contractual commitment amount exceeds the amount of construction interest estimated under appendix D, the excess value is considered part of the amount financed if the lender has contracted to disburse those amounts whether they ultimately are needed to pay for accrued construction interest. If the lender will not disburse the excess amount if it is not needed to pay for accrued construction interest, the excess amount must be ignored for disclosure purposes.

Calculating the Annual Percentage Rate §226.22

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in appendix J to the regulation.
- The U.S. Rule, which is permitted by Regulation Z and briefly explained in appendix J to the regulation. The U.S. Rule is an accrual method that seems to have first surfaced officially in an early nineteenth century United States Supreme Court case, Story v. Livingston (38 U.S. 359).

Whichever method is used by the financial institution, the rate calculated will be accurate if it is able to "amortize" the amount financed while it generates the finance charge under the accrual method selected. Financial institutions also

may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed.

360-Day and 365-Day Years §226.17(c)(3)

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic installment payments.

Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit financial institutions to disregard the fact that months have different numbers of days when calculating and making disclosures. This means financial institutions may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

For example, a financial institution may calculate disclosures using a financial calculator based on a 360-day year with 30-day months, when, in fact, it collects interest by applying a factor of 1/365 of the annual interest rate to actual days.

Disclosure violations may occur, however, when a financial institution applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the financial institution must disclose the higher values of the finance charge, the APR, and the payment schedule resulting from this practice.

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a $10,000 one year, single payment, unsecured loan results in an APR of 12.17 percent (.033333% x 365 = 12.17%), and a finance charge of $1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as $1,200 (12% x $10,000).

However, if there are no other charges except interest, the application of a 360-day year daily rate over 365 days on a regular loan would not result in an APR in excess of the one eighth of one percentage point APR tolerance unless the nominal interest rate is greater than 9 percent. For irregular loans, with one-quarter of 1 percentage point APR tolerance, the nominal interest rate would have to be greater than 18 percent to exceed the tolerance.

Variable Rate Information §226.18(f)

If the terms of the legal obligation allow the financial institution, after consummation of the transaction, to increase the APR, the financial institution must furnish the consumer with certain information on variable rates. Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions. In addition, variable rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable rate disclosure requirements under §226.18 follow.

- Disclosures for variable rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.
- If the variable rate transaction includes either a seller buydown that is reflected in a contract or a consumer buydown, the disclosed APR should be a composite rate based on the lower rate for the buydown period and the rate that is the basis for the variable rate feature for the remainder of the term.
- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).
    - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
    - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, like 45 days before the change date). Instead, the financial institution may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).
- If the initial interest rate is set according to the index or formula used for later adjustments, but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

For variable-rate loans that are not secured by the consumer's principal dwelling or that are secured by the consumer's principal dwelling but have a term of one year or less,

creditors must disclose the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase, and an example of the payment terms that would result from an increase. §226.18(f)(1).

For variable-rate consumer loans secured by the consumer's principal dwelling and having a maturity of more than one year, creditors must state that the loan has a variable-rate feature and that disclosures were previously given. (§226.18(f)(2)) Extensive disclosures about the loan program are provided when consumers apply for such a loan (§226.19(b), and throughout the loan term when the rate or payment amount is changed (§226.20(c)).

Payment Schedule §226.18(g)

The disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the financial institution to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable rate feature.

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed rate loan, unless it contains a variable rate feature during the initial loan term.

Amount Financed §226.18(b)

Definition

The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge.

To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed.

When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed.

In a multiple advance construction loan, proceeds placed in a temporary escrow account and awaiting disbursement in draws to the developer are not considered part of the amount financed until actually disbursed. Thus, if the entire commitment amount is disbursed into the lender's escrow account, the lender must not base disclosures on the assumption that all funds were disbursed immediately, even if the lender pays interest on the escrowed funds.

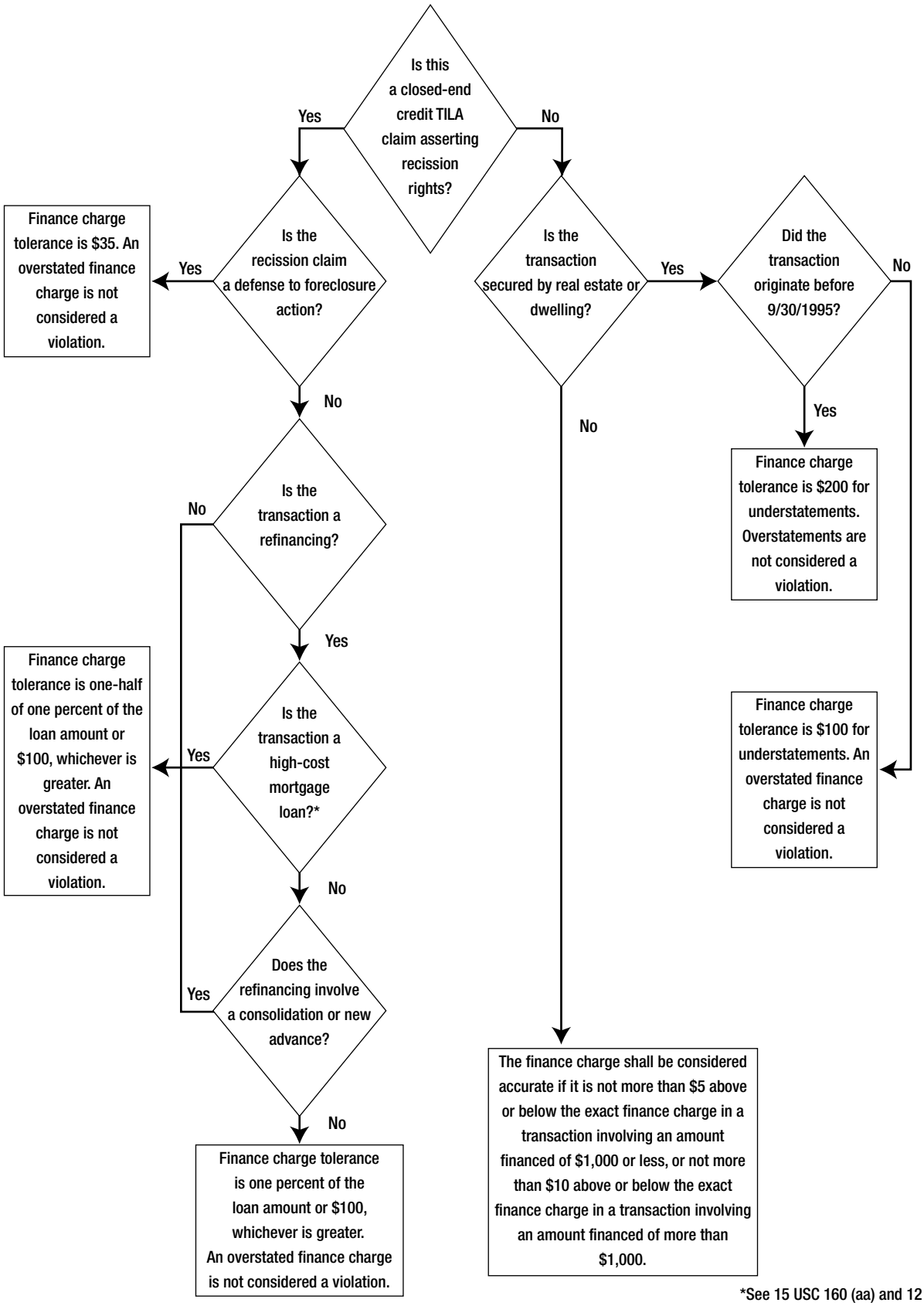
Required Deposit §226.18(r)

A required deposit, with certain exceptions, is one that the financial institution requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

Calculating the Amount Financed

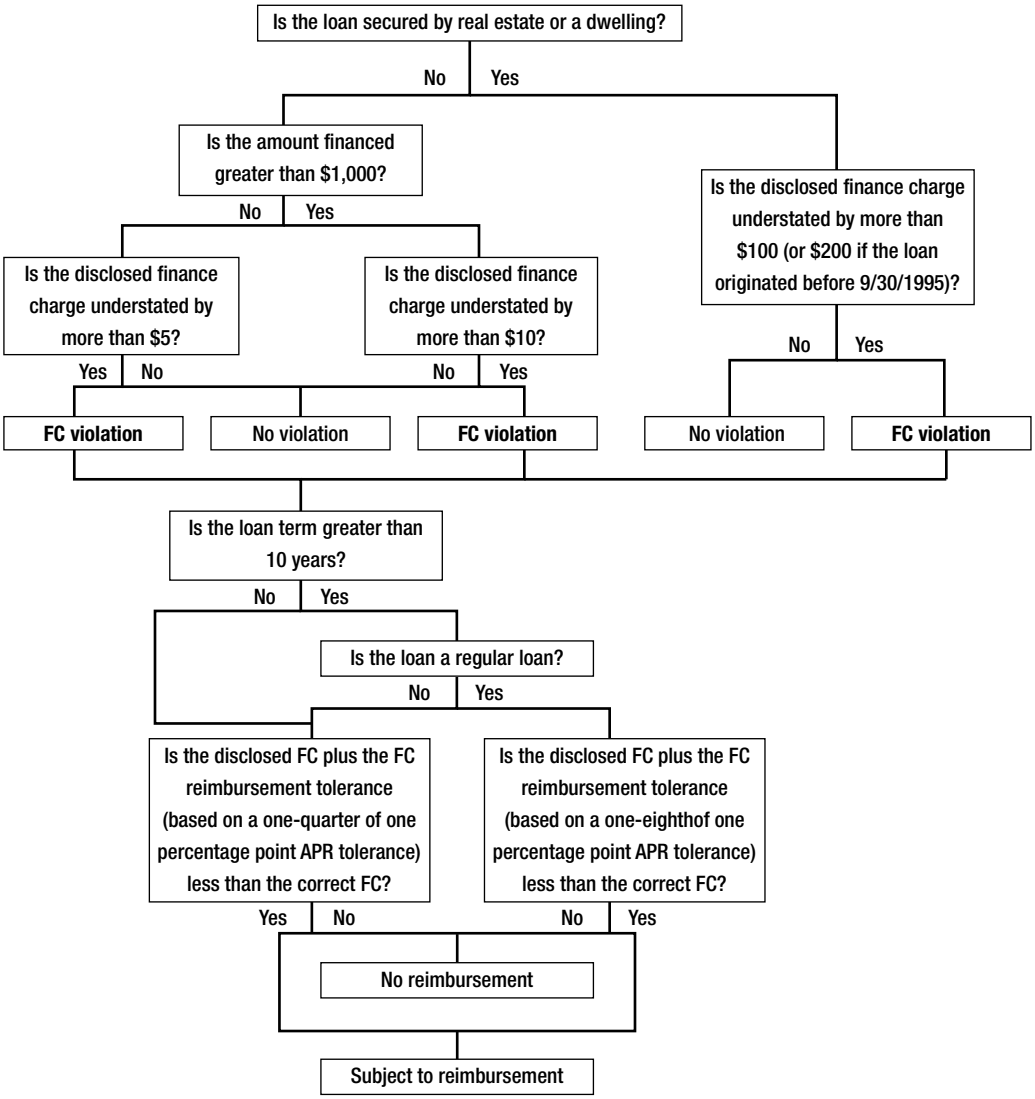
A consumer signs a note secured by real property in the amount of $5,435. The note amount includes $5,000 in proceeds disbursed to the consumer, $400 in precomputed interest, $25 paid to a credit reporting agency for a credit report, and a $10 service charge. Additionally, the consumer pays a $50 loan fee separately in cash at consummation. The

Closed-End Credit: Finance Charge Accuracy Tolerances

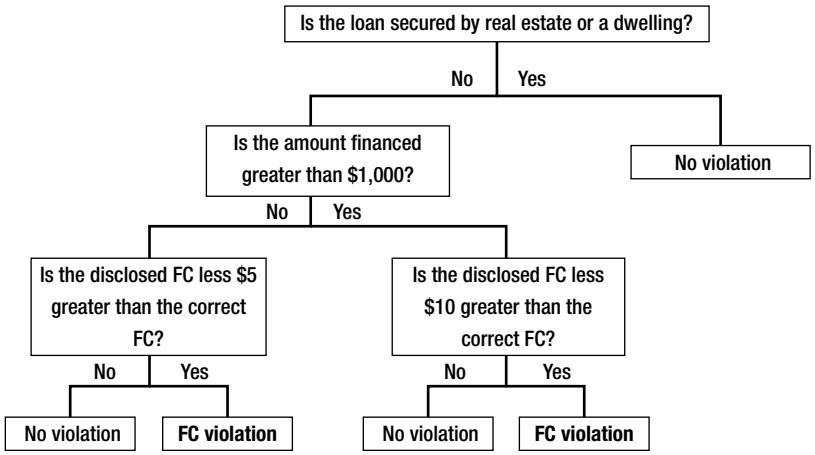


*See 15 USC 160 (aa) and 12 CFR 226.32

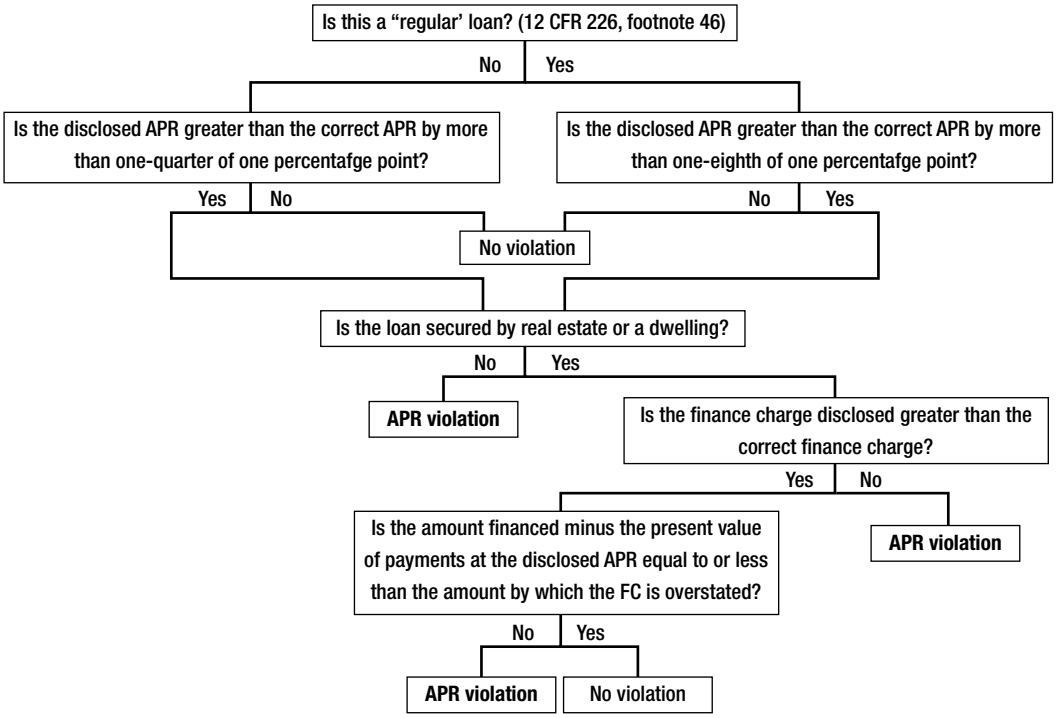
Closed-End Credit: Accuracy and Reimbursement Tolerances for Understated Finance Charges



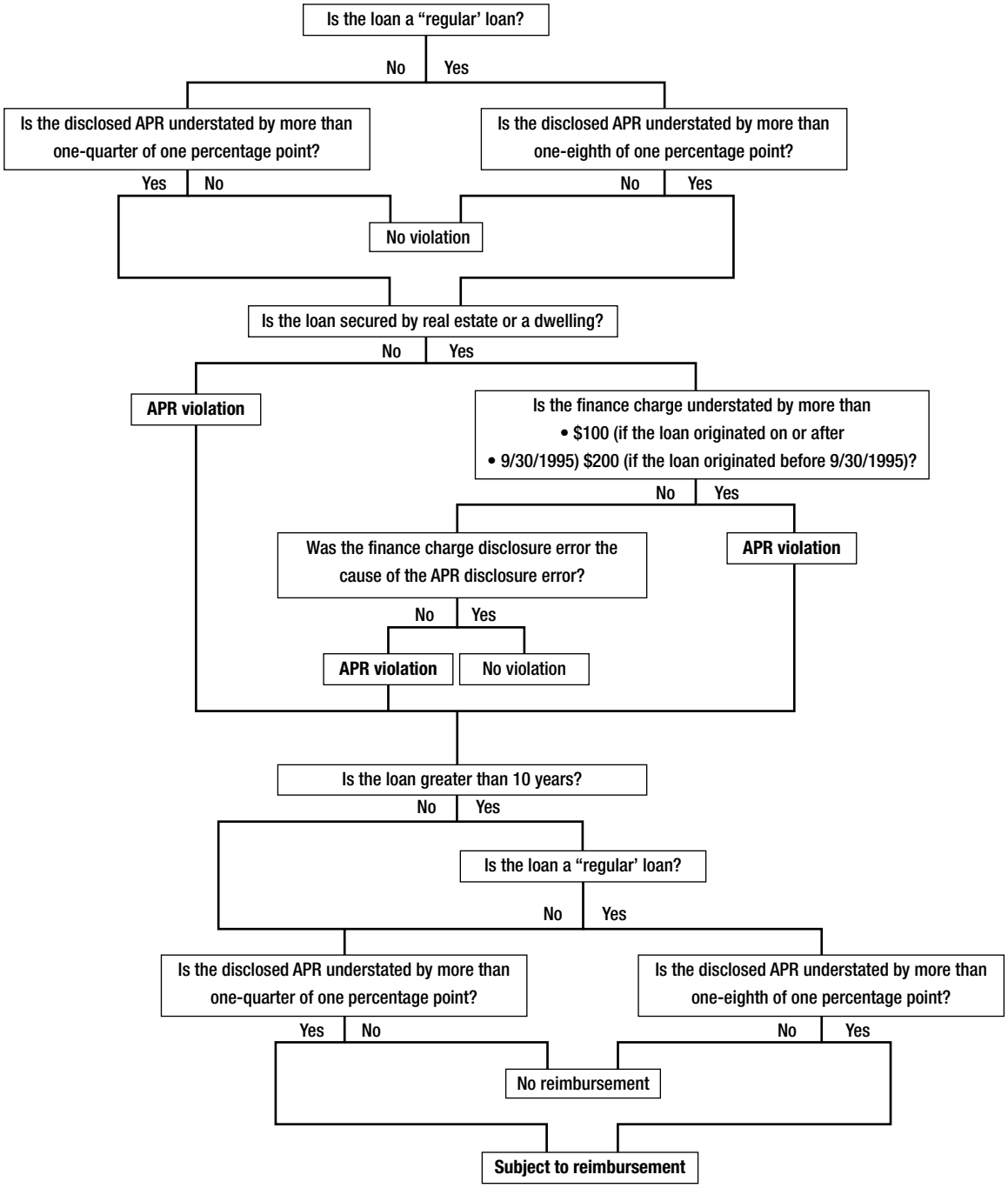
Closed-End Credit: Overstated Finance Charge Accuracy Tolerances



Closed-End Credit: Accuracy Tolerances for Overstated APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for Understated APRs



consumer has no other debt with the financial institution. The amount financed is $4,975.

The amount financed may be calculated by first subtracting all finance charges included in the note amount ($5,435 - $400 - $10 = $5,025). The $25 credit report fee is not a finance charge because the loan is secured by real property. The $5,025 is further reduced by the amount of prepaid finance charges paid separately, for an amount financed of $5,025 - $50 = $4,975. The answer is the same whether finance charges included in the obligation are considered prepaid or precomputed finance charges.

The financial institution may treat the $10 service charge as an addition to the loan amount and not as a prepaid finance charge. If it does, the loan principal would be $5,000. The $5,000 loan principal does not include either the $400 or the $10 precomputed finance charge in the note. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee, not the $10 service charge) to arrive at the amount financed of $5,000 + $25 - $50 = $4,975.

Other Calculations

The financial institution may treat the $10 service charge as a prepaid finance charge. If it does, the loan principal would be $5,010. The $5,010 loan principal does not include the $400 precomputed finance charge. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee and the $10 service charge withheld from loan proceeds) to arrive at the same amount financed of $5,010 + $25 - $50- $10 = $4,975.

Refinancings §226.20

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation. (§226.20(a))

The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the financial institution:

- Increases the rate based on a variable rate feature that was not previously disclosed; or
- Adds a variable rate feature to the obligation.

If, at the time a loan is renewed, the rate is increased, the increase is not considered a variable rate feature. It is the cost of renewal, similar to a flat fee, as long as the new rate remains fixed during the remaining life of the loan. If the original debt is not canceled in connection with such a renewal, the regulation does not require new disclosures. Also, changing the index of a variable rate transaction to a comparable index is not considered adding a variable rate feature to the obligation.

Subpart D—Miscellaneous

Civil Liability §130

If a creditor fails to comply with any requirements of the TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for:

- Actual damage, and
- The cost of any legal action together with reasonable attorney's fees in a successful action.

If it violates certain requirements of the TILA, the creditor also may be held liable for either of the following:

- In an individual action, twice the amount of the finance charge involved, but not less than $100 or more than $1,000. However, in an individual action relating to a closed-end credit transaction secured by real property or a dwelling, twice the amount of the finance charge involved, but not less than $200 or more than $2,000.

- In a class action, such amount as the court may allow. The total amount of recovery, however, cannot be more than $500,000 or 1 percent of the creditor's net worth, whichever is less.

Civil actions that may be brought against a creditor also may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

A creditor that fails to comply with TILA's requirements for high-cost mortgage loans may be held liable to the consumer for all finance charges and fees paid to the creditor. Any subsequent assignee is subject to all claims and defenses that the consumer could assert against the creditor, unless the assignee demonstrates that it could not reasonably have determined that the loan was subject to §226.32.

Criminal Liability §112

Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions §108

The TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly).

Under certain circumstances, the TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit).
- Gross negligence.
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary. (§131)

Relationship to State Law §111

State laws providing rights, responsibilities, or procedures for consumers or financial institutions for consumer credit contracts may be:

- Preempted by federal law;
- Appropriate under state law and not preempted by federal law; or
- Substituted in lieu of TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of the TILA and the implementing sections of Regulation Z:

- Chapter 1, "General Provisions," which contains definitions and acceptable methods for determining finance charges and annual percentage rates. For example, a state law would be preempted if it required a bank to include in the finance charge any fees that the federal law excludes, such as seller's points.
- Chapter 2, "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions. For example, a state law would be preempted if it required a bank to use the terms "nominal annual interest rate" in lieu of "annual percentage rate."
- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and annual percentage rate oral disclosure requirements.

Conversely, state law provisions may be appropriate and are not preempted under federal law if they call for, without contradicting chapters 1, 2, or 3 of the TILA or the implementing sections of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.
- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

The relationship between state law and chapter 4 of the TILA ("Credit Billing") involves two parts. The first part is concerned with §161 (correction of billing errors) and §162 (regulation of credit reports) of the act; the second part addresses the remaining sections of chapter 4.

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in §161 or §162. An exception is made, however, for state law that allows

a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

State law provisions are preempted if they result in violations of §163 through §171 of chapter 4. For example, a state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since it would violate 12 CFR 226.12(d). Conversely, a state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted, since no violation of federal law is involved.

A bank, state, or other interested party may ask the Federal Reserve Board to determine whether state law contradicts chapters 1 through 3 of the TILA or Regulation Z. They also may ask if the state law is different from, or would result in violations of, chapter 4 of the TILA and the implementing provisions of Regulation Z. If the board determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under *§2*26.32) is substantially the same in meaning as a disclosure required under the act or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

Subpart E—Special Rules for Certain Home Mortgage Transactions

General Rules §226.31

The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of Regulation Z. The disclosures for high cost and reverse mortgage transactions must be made clearly and conspicuously in writing, in a form that the consumer may keep.

Certain Closed-End Home Mortgages §226.32

The requirements of this section apply to a consumer credit transaction secured by the consumer's principal dwelling, in which either:

- The APR at consummation will exceed by more than 8 percentage points for first-lien mortgage loans, or by more than 10 percentage points for subordinate-lien mortgage loans, the yield on Treasury securities having comparable periods of maturity to the loan's maturity (as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor); or
- The total points and fees (*see* definition below) payable by the consumer at or before loan closing will exceed the greater of eight percent of the total loan amount or $480 for the calendar year 2002. (This dollar amount is adjusted annually based on changes in the Consumer Price Index. *See* staff commentary to 32(a)(1)(ii) for a historical list of dollar amount adjustments.) (§226.32(a)(1))

Exemptions:

- Residential mortgage transactions (generally purchase money mortgages),
- Reverse mortgage transactions subject to §226.33, or
- Open-end credit plans subject to Subpart B of Regulation Z.

Points and Fees include the following:

- All items required to be disclosed under §226.4(a) and (b), except interest or the time-price differential;
- All compensation paid to mortgage brokers; and
- All items listed in §226.4(c)(7), other than amounts held for future taxes, *unless **all** of the following conditions are met*:
  - The charge is reasonable
  - The creditor receives no direct or indirect compensation in connection with the charge, and
  - The charge is not paid to an affiliate of the creditor; and
- Premiums or other charges, paid at or before closing whether paid in cash or financed, for optional credit life, accident, health, or loss-of-income insurance, and other debt-protection or debt cancellation products written in connection with the credit transaction. (§226.32(b)(1))

Reverse Mortgages §226.33

A reverse mortgage is a non-recourse transaction secured by the consumer's principal dwelling which ties repayment (other than upon default) to the homeowner's death or permanent move from, or transfer of the title of, the home.

Subpart F-Electronic Communication

Section 226.36 contains the rules for electronic delivery of required disclosures, when consumers have consented to receive them electronically. A creditor that delivers disclosure electronically has two options under the regulation. The creditor must:

1. Send the disclosure to the consumer's electronic address; or
2. Make the disclosure available at another location such as an Internet web site; AND
   i. Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

ii. Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

When a disclosure provided by an electronic means is returned to a creditor as undeliverable, the creditor shall take reasonable steps to attempt redelivery using information in its files.

Section 226.36(d)(3) provides exemptions from these rules for certain disclosures. A creditor may comply with items 1 or 2 above, without the sub-requirements of item two for the delivery of the following disclosures:

- §226.5a Credit and charge card applications and solicitations;
- §226.5b(d) certain disclosures related to Home Equity Plans;
- §226.5b(e) the home equity brochure published by the Federal Reserve Board;
- §226.16 open-end credit advertising rules;
- §226.17(g)(1) through (5) certain disclosures when a creditor receives a purchase order or request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation;
- §226.19(b) closed-end variable rate disclosures; and
- §226.24 closed-end advertising rules.

Specific Defenses §108 Defense Against Civil, Criminal, and Administrative Actions

A financial institution in violation of TILA may avoid liability by:

- Discovering the error before an action is brought against the financial institution, or before the consumer notifies the financial institution, in writing, of the error.
- Notifying the consumer of the error within 60 days of discovery.
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the financial institution to avoid a regulatory order to reimburse the customer.

An error is "discovered" if it is:

- Discussed in a final, written report of examination.
- Identified through the financial institution's own procedures.
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the financial institution.

When a disclosure error occurs, the financial institution is not required to re-disclose after a loan has been consummated or an account has been opened. If the financial institution corrects a disclosure error by merely re-disclosing required information accurately, without adjusting the consumer's account, the financial institution may still be subject to civil liability and an order to reimburse from its regulator.

The circumstances under which a financial institution may avoid liability under the TILA do not apply to violations of the Fair Credit Billing Act (chapter 4 of the TILA).

Additional Defenses Against Civil Actions

The financial institution may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error.

A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment.

Showing that a violation occurred unintentionally could be difficult if the financial institution is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The financial institution's demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

Statute of Limitations §108 and §130

Civil actions may be brought within one year after the violation occurred. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a financial institution were to bring an action to collect the consumer's debt.

Criminal actions are not subject to the TILA one-year statute of limitations.

Regulatory administrative enforcement actions also are not subject to the one-year statute of limitations. However, enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges are subject to time limitations by the TILA. Those limitations range from the date of the last regulatory examination of the financial institution, to as far back as 1969, depending on when loans

were made, when violations were identified, whether the violations were repeat violations, and other factors.

There is no time limitation on willful violations intended to mislead the consumer. A summary of the various time limitations follows.

- For open-end credit, reimbursement applies to violations not older than two years.
- For closed-end credit, reimbursement is generally directed for loans with violations occurring since the immediately preceding examination.

Rescission Rights (Open-End and Closed-End Credit) §226.15 and §226.23

TILA provides that for certain transactions secured by the consumer's principal dwelling, a consumer has three business days after becoming obligated on the debt to rescind the transaction. The right of rescission allows consumer(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their homes at risk by offering it/them as security for the credit. Transactions exempt from the right of rescission include residential mortgage transactions (§226.2(a)(24)) and refinancings or consolidations with the original creditor where no "new money" is advanced.

If a transaction is rescindable, consumers must be given a notice explaining that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing by midnight of the third business day after the latest of three events: (1) consummation of the transaction, (2) delivery of material TILA disclosures, or (3) receipt of the required notice of the right to rescind. For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (§226.2(a)(6)). The term "material disclosures" is defined in §226.23(a)(3) to mean the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §226.32(c) and (d).

The creditor may not disburse any monies (except into an escrow account) and may not provide services or materials until the three-day rescission period has elapsed and the creditor is reasonably satisfied that the consumer has not rescinded. If the consumer rescinds the transaction, the creditor must refund all amounts paid by the consumer (even amounts disbursed to third parties) and terminate its security interest in the consumer's home.

A consumer may waive the three-day rescission period and receive immediate access to loan proceeds if the consumer has a "bona fide personal financial emergency." The consumer must give the creditor a signed and dated waiver statement that describes the emergency, specifically waives the right, and bears the signatures of all consumers entitled to rescind the transaction. The consumer provides the explanation for the bona fide personal financial emergency, but the creditor decides the sufficiency of the emergency.

If the required rescission notice or material TILA disclosures are not delivered or if they are inaccurate, the consumer's right to rescind may be extended from three days after becoming obligated on a loan to up to three years.

Examination Objectives

1. To appraise the quality of the financial institution's compliance management system for the Truth in Lending Act and Regulation Z.
2. To determine the reliance that can be placed on the financial institution's compliance management system, including internal controls and procedures performed by the person(s) responsible for monitoring the financial institution's compliance review function for the Truth In Lending Act and Regulation Z.
3. To determine the financial institution's compliance with the Truth In Lending Act and Regulation Z.
4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.
5. To determine whether the institution will be required to make adjustments to consumer accounts under the restitution provisions of the Act.

Examination Procedures

General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).
2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).
   - Organizational charts.
   - Process flowcharts.
   - Policies and procedures.

- Loan documentation and disclosures.
- Checklists/worksheets and review documents.
- Computer programs.

3. Review compliance review and audit work papers and determine whether:
   a. The procedures used address all regulatory provisions (*see* Transactional Testing section on page V-1.27).
   b. Steps are taken to follow up on previously identified deficiencies.
   c. The procedures used include samples that cover all product types and decision centers.
   d. The work performed is accurate (through a review of some transactions).
   e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
   f. Corrective actions are timely and appropriate.
   g. The area is reviewed at an appropriate interval.

Disclosure Forms

4. Determine if the financial institution has changed any preprinted TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:
   - Verify the accuracy of each preprinted disclosure by reviewing the following:
     - Note and/or contract forms (including those furnished to dealers).
     - Standard closed-end credit disclosures (§226.17(a) and §226.18).
     - ARM disclosures (§226.19(b)).
     - High cost mortgage disclosures (§226.32(c)).
     - Initial disclosures (§226.6(a)-(d)) and, if applicable, additional HELOC disclosures (§226.6(e)).
     - Credit card application/solicitation disclosures (§226.5a(b)-(e)).
     - HELOC disclosures (§226.5b(d) and (e)).
     - Statement of billing rights and change in terms notice (§226.9(a)).
     - Reverse mortgage disclosures (§226.33(b)).

Closed-End Credit Forms Review Procedures

a. Determine the disclosures are clear, conspicuous, grouped, and segregated. The terms Finance Charge and APR should be more conspicuous than other terms. (§226.17(a))
b. Determine the disclosures include the following as applicable. (§226.18)
   1. Identity of the creditor;
   2. Brief description of the finance charge;
   3. Brief description of the APR;
   4. Variable rate verbiage (§226.18(f)(1) or (2));
   5. Payment schedule;
   6. Brief description of the total of payments;
   7. Demand feature;
   8. Description of total sales price in a credit sale;
   9. Prepayment penalty's or rebates;
   10. Late payment amount or percentage;
   11. Description for security interest;
   12. Various insurance verbiage (§226.4(d));
   13. Statement referring to the contract;
   14. Statement regarding assumption of the note; and
   15. Statement regarding required deposits.
c. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§226.19)
   1. Consumer handbook on adjustable rate mortgages or substitute;
   2. Statement that interest rate payments and or terms can change;
   3. The index/formula and a source of information;
   4. Explanation of the interest rate/payment determination and margin;
   5. Statement that the consumer should ask for the current interest rate and margin;
   6. Statement that the interest rate is discounted, if applicable;
   7. Frequency of interest rate and payment changes;
   8. Rules relating to all changes;
   9. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment;
   10. Explanation of how to compute the loan payment, giving an example;
   11. Demand feature, if applicable;
   12. Statement of content and timing of adjustment notices; and
   13. Statement that other variable rate loan program disclosures are available, if applicable.
d. Determine that the disclosures required for high-cost mortgage transactions clearly and conspicuously

include the items below. [§226.32(c), *see* Form H-16 in Appendix H.]

1. The required statement "you are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan".
2. Annual percentage rate.
3. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount. [*See* staff commentary to 32(c)(3)]
4. Statement that the interest rate may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.
5. For a mortgage refinancing, the total amount borrowed, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated (grouped together with the amount borrowed).

Open-End Credit Forms Review Procedures

a. Determine the initial disclosure statement is provided before the first transaction under the account and ensure the disclosure includes the items below as applicable. (§226.6)
   1. Statement of when the finance charge is to accrue and if a grace period exists;
   2. Statement of periodic rates used and the corresponding APR;
   3. Explanation of the method of determining the balance on which the finance charge may be computed;
   4. Explanation of how the finance charge would be determined;
   5. Statement of the amount of any other charges;
   6. Statement of creditor's security interest in the property;
   7. Statement of billing rights (§226.12 and §226.13); and
   8. Certain home equity plan information if not provided with the application in a form the consumer could keep. [§226.6(e)(7)]

b. Determine the following credit card disclosures were made clearly and conspicuously on or with a solicitation or an application. Disclosures in 12-point type are deemed to comply with the requirements. *See* staff comment 5a(a)(2)-1. The APR for purchases (other than an introductory rate that is lower than the rate that will apply after the introductory rate expires) must be in at least 18-point type. [§226.5a]
   1. APR for purchases, cash advances, and balance transfers, including penalty rates that may apply. If the rate is variable, the index or formula, and margin must be identified;
   2. Fee for issuance of the card;
   3. Minimum finance charge;
   4. Transaction fees;
   5. Length of the "grace period";
   6. Balance computation method;
   7. Statement that charges incurred by use of the charge card are due when the periodic statement is received

   NOTE: The above items must be provided in a prominent location in the form of a table. The remaining items may be included in the same table or clearly and conspicuously elsewhere on the same document. An explanation of specific events that may result in the imposition of a penalty rate must be placed outside the table with an asterisk inside the table (or other means) directing the consumer to the additional information.

   8. Cash advance fees;
   9. Late payment fees; and
   10. Fees for exceeding the credit limit.

c. Determine that disclosure of items 1-7 in "b" above are made orally for creditor-initiated telephone applications and pre-approved solicitations. Also, determine for applications or solicitations made to the general public that the card issuer makes one of the optional disclosures. (§226.5a(d) and (e))

d. Determine the following home equity disclosures were made clearly and conspicuously, at the time of application. (§226.5b)
   1. Home equity brochure;
   2. Statement that the consumer should retain a copy of the disclosure;
   3. Statement of the time the specific terms are available;
   4. Statement that terms are subject to change before the plan opens;
   5. Statement that the consumer may receive a full refund of all fees;

6. Statement that the consumer's dwelling secures the credit;
7. Statement that the consumer could loose the dwelling;
8. Creditors right to change, freeze, or terminate the account;
9. Statement that information about conditions for adverse action are available upon request;
10. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on $10,000 and a recent APR;
11. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only);
12. Itemization of all fees paid to creditor;
13. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third party fees;
14. Statement regarding negative amortization, as applicable;
15. Transaction requirements;
16. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and
17. For variable rate home equity plans, disclose the following:
    i. That the APR, payment, or term may change;
    ii. The APR excludes costs other than interest;
    iii. Identify the index and its source;
    iv. How the rate will be determined;
    v. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR;
    vi. Statement that the initial rate is discounted and the duration of the discount, if applicable;
    vii. Frequency of APR changes;
    viii. Rules relating to changes in the index, APR, and payment amount;
    ix. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation;
    x. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed;
    xi. A table, based on a $10,000 balance, reflecting all significant plan terms; and
    xii. Statement that rate information will be provided on or with each periodic statement.

e. Determine when the last statement of billing rights was furnished to customers and whether the institution used the short form notice with each periodic statement. (§226.9(a))

f. Determine that the notice of any change in terms was provided 15 days prior to the effective date of the change. (§226.9(b))

g. Determine that disclosure of items 1-7 in "b" above are provided if the account is renewed. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee. (§226.9(e))

h. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any loan in which the APR may increase during the plan. (§226.30(b))

Reverse Mortgage Forms Review Procedures (Both open and closed-end)

a. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below.
    1. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.
    2. A good faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates" including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.
    3. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.
    4. An explanation of the table of total annual loan costs rates.

    NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

Timing of Disclosures

5. Review financial institution policies, procedures, and systems to determine, either separately, or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

a. Credit card application and solicitation disclosures—On or with the application. [§226.5a(b)]

b. HELOC disclosures--At the time the application is provided or within three business days under certain circumstances. (§226.5b(b))

c. Open-end credit initial disclosures --Before the first transaction is made under the plan. (§226.5(b)(1))

d. Periodic disclosures--At the end of a billing cycle if the account has a debit or credit balance of $1 or more or if a finance charge has been imposed. (§226.5(b)(2))

e. Statement of billing rights--At least once per year. (§226.9(a))

f. Supplemental credit devices-- Before the first transaction under the plan. (§226.9(b))

g. Open-end credit change in terms-- 15 days prior to the effective change date. (§226.9(c))

h. Finance charge imposed at time of transaction--Prior to imposing any fee. (§226.9(d))

i. Disclosures upon renewal of credit or charge card--30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged. Alternatively, notice may be delayed until the mailing or delivery of the periodic statement on which the renewal fee is charged to the accounts if the notice meets certain requirements. (§226.9(e))

j. Change in credit account insurance provider--Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§226.9(f))

k. Closed-end credit disclosures-- Before consummation. (§226.17(b))

l. Disclosures for certain closed-end home mortgages--Three business days prior to consummation. (§226.31(c)(1))

m. Disclosures for reverse mortgages --Three days prior to consummation of a closed-end credit transaction or prior to the first transaction under an open-end credit plan. (§226.31(c)(2))

n. Disclosures for adjustable-rate mortgages—At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120 calendar days before a new payment amount is due, or in accordance with other variable-rate subsequent-disclosure regulations issued by a supervisory agency. (§226.20(c))

Record Retention

6. Review the financial institution's record retention practices to determine whether evidence of compliance (for other than the advertising requirements) is retained for at least two years after the disclosures was required to be made or other action was required to be taken. (§226.25)

Electronic Delivery of Disclosures

7. Review the financial institution's policies and procedures with regard to the electronic delivery of disclosures. If disclosures are provided electronically, determine if the procedures adequately ensure compliance with §226.36.

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool.

Advertising

8. Sample advertising copy, including any Internet advertising, since the previous examination and verify that the terms of credit are specific. If triggering terms are used, determine the required disclosures are made. (§226.16 and §226.24)

   For advertisements for closed-end credit, determine:

   - if a rate of finance charge was stated, that it was stated as an APR.
   - if an APR will increase after consummation, a statement to that fact is made.

Closed-End Credit

9. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§226.17)

10. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§226.18)

    a. Amount financed;

    b. Itemization of the amount financed (RESPA GFE may substitute);

    c. Finance charge;

    d. APR;

    e. Variable rate verbiage as follows for loans not secured by a principal dwelling or with terms of one year or less:

       1. Circumstances which permit rate increase;
       2. Limitations on the increase (periodic or lifetime);
       3. Effects of the increase;
       4. Hypothetical example of new payment terms;

f. Payment schedule including amount, timing and number of payments.

g. Total of payments.

h. Total sales price (credit sale).

i. Description of security interest.

j. Credit life insurance premium included in the finance charge unless:

1. Insurance is not required;
2. Premium for the initial term is disclosed; and
3. Consumer signs or initials an affirmative written request for the insurance.

k. Property insurance available from the creditor excluded from the finance charge if the premium for the initial term of the insurance is disclosed.

l. Required deposit.

11. Determine for adjustable rate mortgage loans secured by the borrower's principal dwelling with maturities of more than one year that the required early and subsequent disclosures are complete, accurate, and timely. Early disclosures required by §226.19(a) are verified during the closed-end credit forms review. Subsequent disclosures should include the items below, as applicable. (§226.20(c))

a. Current and prior interest rates;

b. Index values used to determine current and prior interest rates;

c. Extent to which the creditor has foregone an increase in the interest rate;

d. Contractual effects of the adjustment (new payment and loan balance); and

e. Payment required to avoid negative amortization.

NOTE: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures on page V-1.29.

12. Determine, for each type of closed-end rescindable loan being tested, two copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The rescission notice must disclose the items below. (§226.23(b))

a. Security interest taken in the consumer's principal dwelling;

b. Consumer's right to rescind the transaction;

c. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business;

d. Effects of rescission; and

e. Date the rescission period expires.

13. Ensure funding was delayed until the rescission period expired. (§226.23(c))

14. Determine if the institution has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§226.23(e))

15. Determine whether the maximum interest rate in the contract is disclosed for any adjustable rate consumer credit contract secured by a dwelling. (§226.30(a))

Open-End Credit

16. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§226.5(c))

17. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§226.5a(b), (c), and (d))

18. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§226.5b(f))

18. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§226.5b(g) and (h))

20. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s). The periodic statement must disclose the items below, as applicable. (§226.7)

a. Previous balance;

b. Identification of transactions;

c. Dates and amounts of any credits;

d. Periodic rates and corresponding APRs, if variable rate plan, must disclose that the periodic rates may vary;

e. Balance on which the finance charge is computed and an explanation of how the balance is determined;

f. Amount of finance charge with an itemization of each of the components of the finance charge;

g. Annual percentage rate;
h. Itemization of other charges;
i. Closing date and balance;
j. Payment date, if there is a "free ride" period; and
k. Address for notice of billing errors.

21. Verify the institution credits a payment to the open-end account as of the date of receipt. (§226.10)

22. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of $1, the institution must disclose the items below. (§226.11)
    a. Credit the amount to the consumer's account;
    b. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; and
    c. Make a good faith effort to refund the amount of the credit to a deposit account of the consumer if the credit remains for more than six months.

23. Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following. (§226.12 and §226.13)
    a. Credit cards are issued only upon request;
    b. Liability for unauthorized credit card use is limited to $50;
    c. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;
    d. Offsetting credit card indebtedness is prohibited; and
    e. Errors are resolved within two complete billing cycles.

24. Determine, for each type of open-end rescindable loan being tested, two copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform items 11, 12, and 13 under Closed-End Credit.

Additional Variable Rate Testing

25. Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:
    a. Index value;
    b. Margin and method of calculating rate changes;
    c. Rounding method; and
    d. Adjustment caps (periodic and lifetime).

26. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:
    a. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.
    b. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date.). (§226.7(g) and §226.20(c)(2))
    c. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§226.7(g) and §226.20 (c)(1))
    d. Determine that the new payment disclosed (§226.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§226.20(c))

Certain Home Mortgage Transactions

27. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, certain closed-end home mortgages (high-cost mortgages (§226.32) and reverse mortgages (§226.33).

28. Examiners may use the attached worksheet as an aid for identifying and reviewing high-cost mortgages. (Page V-1.32)

29. Review both high-cost and reverse mortgages to ensure the following:
    a. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§226.31(a))
    b. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§226.31(b))
    c. Disclosures are furnished at least three business days prior to consummation of a mortgage transaction covered by §226.32 or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§226.31(c))
    d. Disclosures reflect the terms of the legal obligation between the parties. (§226.31(d))
    e. If the transaction involves more than one creditor, only one creditor shall provide the disclosures. Where the obligation involves multiple consumers, the disclosures may be provided to any consumer who is primarily liable on the obligation. However, for rescindable transactions, the disclosures must be provided to each consumer who has the right to rescind. (§226.31(e))

f. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in §226.22. (§226.31(g))

30. For high-cost mortgages (§226.32), ensure that:

a. In addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation: [*See* model disclosure at App. H-16]

1. Notice containing the prescribed language.(§226.32(c)(1))
2. Annual percentage rate. (§226.32(c)(2))
3. Amount of regular loan payment and the amount of any balloon payment. (§226.32(c)(3))
4. For variable rate loans, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract. (§226.32(c)(4))
5. For a mortgage refinancing, the total amount the consumer will borrow (the face amount) and if this amount includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact is stated. This disclosure shall be treated as accurate if within $100. (§226.32(c)(5))
6. A new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation, there are changes in any terms that make the disclosures inaccurate. For example, if a consumer purchases optional credit insurance and, as a result, the monthly payment differs from the payment previously disclosed, redisclosure is required and a new three-day waiting period applies. (§226.31(c)(1)(i))
7. If a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then at consummation: (§226.31(c)(1)(ii))

   The creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation.

8. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all entitled to the waiting period (a consumer can waive only after receiving the required disclosures and prior to consummation). (§226.31(c)(1)(iii))

b. High-cost mortgage transactions do not provide for any of the following loan terms:

1. Balloon payment (if term is less than 5 years, with exceptions). (§226.32(d)(1)(i) and (ii))
2. Negative amortization. (§226.32(d)(2))
3. Advance payments from the proceeds of more than 2 periodic payments. (§226.32(d)(3))
4. Increased interest rate after default. (§226.32(d)(4))
5. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§226.32(d)(5))
6. Prepayment penalties (but permitted in the first five years if certain conditions are met). (§226.32(d)(6) and (7))
7. A due-on-demand clause permitting the creditor to terminate the loan in advance of maturity and accelerate the balance, with certain exceptions. (§226.32(d)(8))

c. The creditor is not engaged in the following acts and practices for high-cost mortgages:

1. *Home improvement contracts* – paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§226.34(a)(1))
2. *Notice to assignee* – selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§226.34(a)(2))
3. *Refinancing within one year of extending credit* – within one year of making a high-cost mortgage loan, a creditor may not refinance any high-cost mortgage loan to the same borrower into another high-cost mortgage loan that is not in the borrower's interest. This also applies to assignees that hold or service the high-cost mortgage loan. Commentary to 34(a)(3) has examples applying the refinancing prohibition and addressing "borrower's interest." (§226.34(a)(3))
4. *Consumers' ability to repay* – engaging in a pattern or practice of extending high-cost mortgages based on the consumer's collateral without regard to repayment ability, including the consumer's current and expected income, current obligations, and employment. A violation is presumed if there is a pattern or practice of making such mortgage loans without verifying and documenting consumers' repayment ability.

   A. A creditor may consider any expected income of the consumer, including:

      i. Regular salary or wages;
      ii. Gifts;
      iii. Expected retirement payments; and
      iv. Income from self-employment.

B. Equity income that would be realized from the collateral may not be considered.

C. Creditors may verify and document a consumer's income and obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include:

i. Credit reports;

ii. Tax return;

iii. Pension statements; or

iv. Payment records for employment income.

D. If a loan transaction includes a discounted introductory rate, the creditor must consider the consumer's ability to repay based on the non-discounted or fully indexed rate.

NOTE: Commentary to 34(a)(4) contains guidance on income that may be considered, on "pattern or practice," and on "verifying and documenting" income and obligations. (§226.34(a)(4))

31. Ensure that the creditor does not structure a home-secured loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. *See* staff commentary to 34(b) for factors to be considered. (§226.34(b))

Administrative Enforcement

32. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide), continue with step 33.

33. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.

34. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed:

a. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

b. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

If the noncompliance involves direct credit:

c. Make an initial determination whether the violation is a pattern or practice.

d. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

e. Estimate the total impact on the population based on the expanded sample.

f. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

g. Inform management of the financial institution's options under §130 of the TILA for avoiding civil liability and of its option under the policy guide and §108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.

High-Cost Mortgage (§226.32) Worksheet

Borrower's Name: Loan Number:

Coverage

	Yes	No
Is the loan secured by the consumer's principal dwelling? [§226.2(a), §226.32(a)(1)]		
If the answer is No, STOP HERE		
Is the loan for the following purpose?		
1. Residential Mortgage Transaction—[§226.2(a)(24)]		
2. Reverse Mortgage Transaction—[§226.33]		
3. Open-End Credit Plan—Subpart B [note prohibition against structuring loans as open-end plans to evade §226.32—[§226.34(b)]		

If the answer is yes to Box 1, 2, or 3, STOP HERE. If No, continue to Test 1.

Test 1—Calculation of APR

A. Disclosed APR		
B. Treasury Security Yield of Comparable Maturity Obtain the Treasury Constant Maturities Yield from the FRB's Statistical Release, H-15—Selected Interest Rates (the "Business" links will display daily yields). Use the yield that has the most comparable maturity to the loan term and is from the 15th day of the month that immediately precedes the month of the application. If the 15th is not a business day, use the yield for the business day immediately preceding the 15th. If the loan term is exactly halfway between two published security maturities, use the lower of the two yields.) Note: Creditors may use the FRB's Selected Interest Rates or the actual auction results. *See* Staff Commentary to Regulation Z for further details. [§226.32(a)(1)(i)] **http://www.federalreserve.gov/releases/H15/data.htm**		
C. Treasury Security Yield of Comparable Maturity (Box B) **Plus:** 8 percentage points for first-lien loan; or 10 percentage points for subordinate-lien loan		
	Yes	**No**
D. Is Box A greater than Box C?		

If Yes, the transaction is a High-Cost Mortgage. If No, continue to Test 2, Points and Fees.

Test 2—Calculation of Points and Fees		
STEP 1: Identify all Charges Paid by the Consumer at or before Loan Closing		
A. Finance Charges - §226.4(a) and (b)—(Interest, including per-diem interest, and time price differential are excluded from these amounts.)		
	Fee	**Subtotals**
Loan Points		
Mortgage Broker Fee		
Loan Service Fees		
Required Closing Agent/3rd Party Fees		
Required Credit Insurance		
Private Mortgage Insurance		
Life of Loan Charges (flood, taxes, etc.)		
Any Other Fees Considered Finance Charges		
Subtotal		
B. Certain Non-Finance Charges Under §226.4(c)(7)—Include fees paid by consumers **only** if the amount of the fee is unreasonable or if the creditor receives direct or indirect compensation from the charge or the charge is paid to an affiliate of the bank. (*See* the example in §226.32(b)(1)(ii) of the commentary for further explanation.)		
Title Examination		
Title Insurance		
Property Survey		
Document Preparation Charge		
Credit Report		
Appraisal		
Fee for "Initial" Flood Hazard Determination		
Pest Inspection		
Subtotal		
C. Premiums or Other Charges for Optional Credit Life, Accident, Health, or Loss-of-Income Insurance, or Debt-Cancellation Coverage		
D. Total Points & Fees: Add Subtotals for A, B, C		

Test 2—Calculation of Points and Fees (continued)		
STEP 2: Determine the Total Loan Amount for Cost Calculation [226.32(a)(1)(ii)]		
A. Determine the Amount Financed [§226.18(b)]		
Principal Loan Amount		
Plus: Other Amounts Financed by the Lender (*not already included in the principal and not part of the finance charge*)		
Less: Prepaid Finance Charges [§226.2(a)(23)]		
Equals: Amount Financed		
B. Deduct costs included in the points and fees under §226.32(b)(1)(iii) and (iv) (Step 1, Box B and Box C) that are financed by the creditor		
C. Total Loan Amount (Step 2, Box A minus Box B)		
STEP 3: Perform High-Fee Cost Calculation		
A. Eight Percent of the Total Loan Amount (Step 2, Box C)		
B. Annual Adjustment Amount - [§226.32(a)(1)(ii)] The Federal Reserve sets a new threshold for each year. Refer to the FRB website for approppriate years' amounts and use the dollar amount corresponding to the year of the loan's origination.		
C. Total Points & Fees (Step 1, Box D)		
	Yes	**No**
In Step 3, does Box C exceed the greater of Box A or Box B?		
If Yes, the transaction is a High-Cost Mortgage. **If No, the transaction is not a High-Cost Mortgage under Test 2, Points and Fees.**		

References

12 CFR 226: Truth in Lending—Regulation Z (FRB's regulation and official staff commentary)
http://www.fdic.gov/regulations/laws/rules/6500-2100.html#6500part226tilregz

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution
http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

(This page intentionally left blank.)

Determining Whether TIL Restitution is Required

Overview

This section provides information that relates to the identification of reimbursable Truth in Lending violations, reimbursement calculations, and the determination of appropriate corrective action.

Section 108(e)(2) of the Truth in Lending Act (Act) directs that the FDIC shall require "adjustments" (monetary reimbursement) to consumers for understated annual percentage rates (APR) or finance charges (FC). Unless other statutory or regulatory exemptions are met, the FDIC is required to seek reimbursement and may not waive or grant relief from reimbursement. If an institution does not voluntarily comply with the law and make reimbursement, §108(e)(4) of the Act authorizes the FDIC to order institutions to make monetary adjustments to the accounts of consumers where an APR or FC was understated.

In general, the FDIC must require restitution when understatement of the cost of borrowing results from a clear and consistent pattern or practice of violations, gross neglect, or a willful violation intended to mislead the consumer. This parallels the reimbursement requirements of §108(e)(2) of the Act. In such instances, a file search may be requested to detect loans containing specific problems requiring reimbursement.

Historically, the FDIC has treated a request made by non-member banks seeking relief from making reimbursement under the Truth in Lending Act, 15 USC §1601 et seq. (TILA), as an application under its regulations. The Board has delegated authority to the Director of the Division of Supervision and Consumer Protection to grant or deny these requests. The Director may further delegate this authority to the Regional Directors, but only to deny requests where the amount of reimbursement totals less than $25,000.

The TILA grants the enforcement agencies very little discretion to grant relief from reimbursement for violations. Because of this limited discretion, the FDIC has not been able to grant relief in many instances. However, should a nonmember bank wish to pursue a request for relief, the request will be processed within the following time frames:

- Requests that can be processed under delegated authority by the Regional Director and Regional Counsel must be completed within 60 days after receipt unless the institution has agreed in writing to an extension of time to make the determination.
- Requests requiring action by the Washington Office will be referred by the Regional Office to the Washington Office within 45 days of receipt. A decision will be made within 45 days of receipt in Washington.

Legal Requirements

Section 108(e) of the TILA, which governs enforcement of TILA, provides a very specific framework for requiring agency action on restitution. Once the FDIC determines that a disclosure error involving an inaccurate APR or finance charge has occurred, and that the error has resulted from "gross negligence," or a "clear and consistent pattern or practice of violations," the agency shall require an adjustment unless one of four stated exceptions applies, in which case the agency need not require an adjustment. If the exceptions apply, or in cases of similar disclosure errors, an agency may require an adjustment.

There are four instances where the FDIC has discretion to waive reimbursement. Three of these exceptions are straightforward and fact specific:

1. The error involves a fee or charge that would otherwise be excludable in computing the finance charge.
2. The error involved a disclosed amount which was 10 percent or less of the amount that should have been disclosed and either the annual percentage rate (APR) or finance charge was disclosed correctly; or
3. The error involved a total failure to disclose either the APR or finance charge.
4. The fourth exception is the one most frequently cited by an institution in requesting relief. It is the one that is most difficult to meet since it contains four elements, **all four of which must be met for the exception to apply**. The conditions are that:
   - The error resulted from a unique circumstance;
   - The disclosure violations are clearly technical and non-substantive;
   - The disclosure violations do not adversely affect information provided to the consumer; *and*
   - The disclosure violations have not misled or otherwise deceived the consumer.

Under provisions of the Act, a financial institution will generally have no civil or regulatory liability if it takes two affirmative corrective actions. Within 60 days of "discovering" an error (but before institution of a civil action or receipt of a written notice of error from a consumer), the financial institution must both:

- Notify the consumer of the error, *and*
- Reimburse the consumer for overcharges

An error is "discovered" if the institution either identifies the error through its own procedures or if it is disclosed in a written examination report. If the financial institution attempts to correct a disclosure error by merely redisclosing the required information accurately, without reimbursing

the consumer, correction has not been effected. Consumer reimbursement is an inseparable part of the correction action.

Procedures for Making a Request

If an institution requests relief from reimbursement, it should do so within 60 days of receipt of the report of examination containing the request to conduct a file search and make restitution to affected customers. The request should be directed to the attention of the Regional Director and must address the statutory factors contained in §108(e) of the TILA. The Regional Director will notify the institution of the receipt of the request and that pending a final determination, the institution is not required to complete corrective action on the restitution request.

Process for Making Restitution

Restitution must be made expeditiously. When lump sum payments to consumers are required to be made, they must be provided to the consumer either by official check or a deposit into an existing unrestricted consumer asset account, such as an unrestricted savings, checking or NOW account. If, however, the loan that triggered reimbursement is delinquent, in default, or has been charged off, the institution may apply all or part of the reimbursement to the amount past due, if permissible under law.

There have been instances where institution personnel have inappropriately asked consumers to return reimbursement checks to the institution. This is not permissible. The FDIC views any such attempt to prevent unrestricted access by the consumer to reimbursement proceeds as a serious breach of fiduciary duty as well as a violation of law and regulation. These violations will be subject to enforcement action including, but not limited to, assessment of civil money penalties, orders to cease and desist, and possible removal/prohibition orders.

Determining Whether a Pattern or Practice Exists

The Truth in Lending Act (§108(e)) requires reimbursement when a disclosure error involving an understated APR or finance charge exceeds the allowed tolerance and results from a "clear and consistent pattern or practice of violations." The term "pattern or practice" is not defined by the Act, Regulation Z or the Official Staff Commentary to the Regulation, the Interagency Policy Guide, or the FFIEC's interpretive Questions and Answers.

However, the usual interpretation has been that a "pattern or practice" exists where there are more than isolated occurrences involving violations; however, a determination of whether a "pattern or practice" exists will depend on the facts and circumstances of individual situations.

Examiners should use the following guidance to determine if a pattern or practice exists for reimbursement purposes during the review of their initial sample of loans:

- If the frequency of a violation represents at least ten percent of the credit transactions sampled that have the same features or that are subject to the same regulatory requirements; and
- Within the given category of credit transactions two or more violations of the same type have been identified; then
- Examiners should determine if the cause of the violation is other than a random error. This may require the examiner to expand the sample of types of loans with violations to verify if the hypothesis of a particular pattern or practice is correct. In situations involving small samples where the number or percentage of violations noted are within the lower ranges of the minimum frequency requirements, examiners should always review additional files of the same type (if available) to confirm or refute the initial hypothesis.

Satisfying any one of the following three criteria will help demonstrate the existence of a pattern OR practice leading to violations discovered during the sampling process:

- Conduct grounded in written or unwritten policy, procedure or established practice.
- Similar conduct by an institution toward multiple consumers.
- Conduct having some common source or cause within the institution's control.

Examiners should note that the minimum number of two violations would satisfy the ten percent minimum frequency requirement only in samples containing fewer than 25 loans. In a sample containing 55 loan transactions, at least six violations would be required to demonstrate a ten percent frequency for consideration of a hypothesis that a pattern or practice may exist.

Examiners should be certain that both the number of violations (numerator) and total sample of credit features reviewed (denominator) support their determination. Properly identifying the universe being sampled for the denominator is a key factor in this process.

- For example, samples of unsecured installment loans are normally separated from home mortgage loans, but it may be reasonable to combine them when a violation is discovered that involves the same or similar omission of credit-insurance disclosures, even though the types of loans are quite different. A review of two mortgage loans and three unsecured consumer loans, where credit life insurance was financed as part of the transactions, all lacked the affirmative written request for insurance and accompanying

initials or signature, thereby reflecting a pattern or practice leading to the violations.

- In other cases, some combinations or separations of samples may be impacted by findings concerning the separation of banking functions, such as between employees or between different branch offices of the institution. For example, it is discovered that a new loan officer in the installment loan area has not been disclosing the amount of the premiums for disability insurance to customers, yet the mortgage loan department provides the correct disclosure when offering that insurance to customers. In this situation, it would be more appropriate to combine the samples from both departments because the cause of the error is solely within the installment loan area and confined to one loan officer.
- In another example, in a review of 65 consumer loans, errors in credit insurance disclosures were discovered in all six loans involving consumer purchases of credit life insurance; however, no errors were discovered in 59 loans where the consumer did not purchase credit insurance. The frequency of violations in this case is 100 percent (six of six instances) as these were the loans where the disclosures were required to be made but were not made correctly.
- Another example would be where violations are found involving private mortgage insurance (PMI). To further test whether this error would constitute a pattern or practice, the examiner should sample additional mortgage loans where the purchase of PMI was required. It would not be appropriate to consider loans where PMI was not a requirement for the loan.

In a situation where violations are discovered in some construction loans, it would not be correct to consider all real estate loans as the applicable universe. The universe in that situation should consist of only construction loans to determine whether a particular pattern or practice was the cause of the violation.

References

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution (FFIEC Policy Guide on Reimbursement)
http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

FIL 20-98: Reimbursible Violations of the Truth in Lending Act
http://www.fdic.gov/news/news/financial/1998/fil9820a.html

DCA RD Memo 99-010: Joint Statement of Policy on the administrative enforcement of the Truth in Lending (TIL) Act – Restitution (Policy Statement) and Questions and Answers (Q&A) pertaining to this Policy.
http://fdic01/division/dsc/memos/memos/direct/6430-12.pdf

(This page intentionally left blank.)

Real Estate Settlement Procedures Act (RESPA)[1]

Introduction

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC §§2601-17) became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) promulgated Regulation X (24 CFR §3500) which implements RESPA. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992, Congress amended RESPA to cover subordinate lien loans. HUD, however, decided not to enforce these provisions until Regulation X was amended to cover these loans. On February 10, 1994, Regulation X was amended to extend coverage to subordinate lien loans. The amendments were effective August 9, 1994. Exemptions from coverage of RESPA and Regulation X, set forth in §3500.5(b), were effective March 14, 1994. Technical corrections and amendments to the rule were issued on March 30, 1994 and July 22, 1994.

On June 7, 1996, HUD amended Regulation X to clarify certain exemption provisions of RESPA, amend the controlled business disclosure requirements, and to address specific comments raised in the 1994 rule. These amendments became effective on October 7, 1996. Congress further amended RESPA by changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 in September 1996, to clarity certain definitions including the controlled business disclosure requirements which were changed to the new term affiliated business arrangements. The changes also reduced the disclosures under the Mortgage Servicing provisions of RESPA effective on May 30, 1997.

HUD issued a proposed rule in May 1997 that was intended to amend §3500.21 of the RESPA regulations to conform to 1996 statutory changes that eliminated unnecessary disclosures in the mortgage servicing transfer notice. Through a proposed rule published July 2002, HUD stated its intent to finalize these servicing transfer notice changes to the regulations, but advised lenders that in the interim they may comply with the language found in §6(a) of RESPA and provide the servicing transfer notice in conjunction with the GFE. Until HUD finalizes a revised rule on mortgage servicing transfer notices, the Agencies will accept as in compliance with RESPA notices that conform with either the model disclosures found in Appendix MS-1 to §3500.21 of the RESPA regulations or the provisions of §6(a) of the statute.

Regulation Overview

Coverage (§3500.5(a))

RESPA is applicable to all "federally related mortgage loans." Federally related mortgage loans include:

Loans, including refinances, secured by a first or subordinate lien on residential real property upon which:

- A 1-4 family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives), or
- A manufactured home is located or is to be constructed using proceeds of the loan; and to which any of the following applies:
- Loans made by a lender[2], creditor[3], dealer[4];
- Loans made or insured by an agency of the federal government;
- Loans made in connection with a housing or urban development program administered by an agency of the federal government;
- Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor)[5];
- Loans which are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation; or
- Installment sales contracts, land contracts or contracts for deed on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, dealer or creditor subject to the regulation.

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 04-016: Revised FFIEC Examination Procedures for RESPA Servicing Rights Notice.

[2] A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by, any agency of the Federal Government.

[3] A creditor is defined in §103(f) of the Consumer Credit Protection Act (15 USC §1602(f). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than $1,000.000 per year.

[4] Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned, before the first payment is due to any lender or creditor otherwise subject to the regulation.

[5] FNMA – Federal National Mortgage Association; GNMA – Government National Mortgage Association; FHLMC – Federal Home Loan Mortgage Association.

Exemptions (§3500.5(b))

The following transactions are exempt from coverage:

- A loan on property of 25 acres or more (whether or not a dwelling is located on the property).
- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR §226.3(a)(1)).
- A temporary loan, such as a construction loan. (The exemption does not apply if the loan is used as, or may be converted to, permanent financing by the same financial institution.) If the lender issues a commitment for permanent financing, it is covered by the regulation. Any construction loan with a term of two years or more is covered by the regulation, unless it is made to a bonafide contractor. "Bridge" or "swing" loans are not covered by the regulation.
- A loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a 1- 4 family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender actually approves the assumption.
- A renewal or modification where the original obligation (note) is still in effect but modified.
- A bona fide transfer of a loan obligation in the secondary market (however, the mortgage servicing transfer disclosure requirements of 24 CFR 3500.21 still apply). Mortgage broker transactions which are table funded (the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary market transactions and therefore covered by RESPA. The exemption does not apply if there is a transfer of title to the property.

Requirements

Special Information Booklet (§3500.6)

A financial institution is required to provide the borrower with a copy of the Special Information Booklet at the time a written application is submitted, or no later than three business days after the application is received. If the application is denied before the end of the three business day period, the institution is not required to provide the booklet. If the borrower uses a mortgage broker, the broker, rather than the institution, must provide the booklet.

- An application includes the submission of a borrower's financial information, either written or computer-generated, for a credit decision on a federally related mortgage loan. To be considered a written application, the submission must state or identify a specific property. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan. [§3500.2(b)]
- A financial institution that complies with Regulation Z (12 CFR §226.5b) for open-end home equity plans is deemed to have complied with this section.
- The booklet does not need to be given for refinancing transactions, closed-end subordinate lien mortgage loans and reverse mortgage transactions, or for any other federally related mortgage loan not intended for the purchase of a one-to-four family residential property.

Part one of the booklet describes the settlement process, the nature of charges, and suggests questions to be asked of lenders, attorneys and others to clarify what services they will provide for the charges quoted. It also contains information on the rights and remedies available under RESPA and alerts the borrower to unfair or illegal practices.

Part two of the booklet contains an itemized explanation of settlement services and costs, as well as sample forms and worksheets for cost comparisons. The appendix has a listing of consumer literature on home purchasing, maintenance protection, and other related topics.

Good Faith Estimates (GFE) of Amount or Range of Settlement Costs (§3500.7)

A financial institution must provide, in a clear and concise form, a good faith estimate of the amount of settlement charges that the borrower is likely to incur. The GFE must include all charges that will be listed in section L of the HUD-1 Settlement Statement, and must be provided no later than three business days after the written application is received. This can be an estimate of the dollar amount or range of dollar amounts for each settlement service. The estimate of the amount or range for each charge: (1) must bear a reasonable relationship to the borrower's ultimate cost for each settlement charge; and (2) must be based upon experience in the locality or area in which the property involved is located. A suggested form is set forth in Appendix of Regulation X. If the boorrower's application is denied before the end of the three business day period, the institution is not required to provide the disclosure.

- A financial institution that complies with Regulation Z (12 CFR §226.5b) for open-end home equity plans is deemed to have complied with this section.
- For "no cost" or "no point" loans, the GFE must disclose any payments to be made to affiliated or independent settlement service providers. These payments should be shown as P.O.C. (Paid Outside of Closing).
- For dealer loans, the institution is responsible for providing the GFE either directly or by the dealer.

- For brokered loans, if the mortgage broker is the exclusive agent of the institution either the institution or the broker shall provide the GFE within three business days after the broker receives or prepares the application. When the broker is not the exclusive agent of the institution, the institution is not required to provide the GFE if the broker has already provided the disclosure, but the funding lender must ascertain that the GFE has been delivered.

When the financial institution requires the use of a particular settlement service provider and requires the borrower to pay all or a portion of the cost of those services, the institution must include with the GFE the following disclosures:

- A statement that use of the provider is required and that the estimate is based on the charges of the designated provider.
- The name, address and telephone number of the designated provider.
- A description of the nature of any relationship between each such provider and the institution. A relationship exists if:
  - The provider is an associate of the institution, as defined in [§3(8) of RESPA (12 USC 2602(8))];
  - The provider has maintained an account with the institution or had an outstanding loan or credit arrangement with the institution within the last twelve months; or,
  - The institution has repeatedly used or required borrowers to use the provider's services within the last twelve months.
- The statement that, except for a provider that is the institution's chosen attorney, credit reporting agency, or appraiser, if the institution is in an affiliated business relationship with the provider, the institution may not require use of that provider (24 CFR §3500.15).
- If the institution maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others and at the time of application has not decided which provider will be selected, the institution may comply with this section by:
  - Providing a written statement that the institution will require a particular provider from an approved list, and
  - Disclosing in the GFE the range of costs for the required providers and providing the name of the specific provider and the actual cost on the HUD settlement statement.

  If the list is less than 5 providers of service, the names, addresses, telephone numbers, and costs are required along with the business relationship.

Uniform Settlement Statement (HUD-1 or HUD-1A) (§3500.8)

The HUD-1 and HUD-1A must be completed by the person (settlement agent) conducting the closing and must conspicuously and clearly itemize all charges related to the transaction. The HUD-1 is used for transactions in which there is a borrower and seller. For transactions in which there is a borrower and no seller (refinancings and subordinate lien loans), the HUD-1 may be completed by using the borrower's side of the settlement statement. Alternatively, the HUD-1A may be used. However, no settlement statement is required for home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A contains the instructions for completing the forms.

Printing and Duplication of the Settlement Statement (§3500.9)

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A that do not require prior HUD approval such as size of pages; tint or color of pages; size and style of type or print; spacing; printing on separate pages, front and back of a single page or on one continuous page; use of multi-copy tear-out sets; printing on rolls for computer purposes; addition of signature lines; and translation into any language. Other changes may be made only with the approval of the Secretary of Housing and Urban Development.

One-Day Advance Inspection of the Settlement Statement (§3500.10)

Upon request by the borrower, the HUD-1 or HUD-1A must be completed and made available for inspection during the business day immediately preceding the day of settlement, setting forth those items known at that time by the person conducting the closing.

Delivery (§3500.10(a) and (b))

The completed HUD-1 or HUD-1A must be mailed or delivered to the borrower, the seller (if there is one) and the lender (if the lender is not the settlement agent) and/or their agents at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. The HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement if the borrower or borrower's agent does not attend the settlement.

Retention (§3500.10(e))

The financial institution must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the institution disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred,

the institution shall provide a copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as part of the transfer. The owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

Prohibition of Fees for Preparing Federal Disclosures (§3500.12)

For loans subject to RESPA, no fee may be charged for preparing the Settlement Statement or the Escrow Account statement or any disclosures required by the Truth in Lending Act.

Prohibition Against Kickbacks and Unearned Fees (§3500.14)

Any person who gives or receives a fee or a thing of value (payments, commissions, fees, gifts or special privileges) for the referral of settlement business is in violation of Section 8 of RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered kickbacks. Appendix B of Regulation X provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

Penalties and Liabilities

Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees including:

- Civil liability to the parties affected, equal to three times the amount of any charge paid for such settlement service.
- The possibility that the costs associated with any court proceeding together with reasonable attorney's fees could be recovered.
- A fine of not more than $10,000 or imprisonment for not more than 1 year or both, for each violation.

Affiliated Business Arrangements (§3500.15)

If a financial institution has either an affiliate relationship or a direct or beneficial ownership interest of more than 1% in a provider of settlement services and the lender directly or indirectly refers business to the provider it is an affiliated business arrangement. An affiliated business arrangement is not a violation of section 8 of RESPA and of §3500.14 of Regulation X if the following conditions are satisfied.

Prior to the referral, the person making each referral has provided to each person whose business is referred an Affiliated Business Arrangement Disclosure Statement (Appendix D). This disclosure shall specify the following:

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the financial institution; and
- The estimated charge or range of charges generally made by such provider.

This disclosure must also be provided on a separate piece of paper either at time of loan application, or with the GFE, or at the time of the referral.

The institution may not require the use of such a provider, with the following exceptions; the institution may require a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency or real estate appraiser chosen by the institution to represent its interest. The institution may only receive a return on ownership or franchise interest or payment otherwise permitted by RESPA.

Title Companies (§3500.16)

Financial institutions that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, to use a particular title company.

Civil liability for violating the provision that a financial institution (seller) cannot require a borrower to use a particular title company is an amount equal to three times that of all charges made for such title insurance.

Escrow Accounts (§3500.17)

On October 26, 1994, HUD issued its final rule changing the accounting method for escrow accounts, which was originally effective April 24, 1995. The rule establishes a national standard accounting method, known as aggregate accounting. Existing escrow accounts were allowed a three-year phase-in period to convert to the aggregate accounting method. The final rule also established formats and procedures for initial and annual escrow account statements.

The amount of escrow funds that can be collected at settlement or upon creation of an escrow account is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth of the estimated total annual payments from the account.

Escrow Account Analysis (§3500.17(c)(2) and (3))

Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer shall use an escrow disbursement date that is on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

HUD published a proposed rule on September 3, 1996, to address and clarify its existing escrow accounting procedures. Specifically, the proposed rule addresses mortgage escrow account disbursement requirements where the payee (i.e., the entity to which escrow items are owed, such as a taxing jurisdiction) offers a choice of annual or installment disbursements. In the supplementary Federal Register material accompanying this proposal, HUD indicates that until it publishes a final rule, servicers should follow the following approach:

- Where a payee offers the option of installment disbursements or a discount for annual disbursements, the servicer should make disbursements on an installment basis, but may, at the servicers' discretion, make annual disbursements, in order to take advantage of the discount for the borrower; HUD encourages servicers to follow the preference of the borrower.
- Where the payee offers the option of either annual disbursements with no discount or installment payments, the servicer is required to make installment payments.

The servicer shall also analyze each account at the completion of the computation year to determine the borrower's monthly payments for the next computation year.

Transfer of Servicing (§3500.17(e))

If the new servicer changes either the monthly payment amount or the accounting method used by the old servicer, then it must provide the borrower with an initial escrow account statement within 60 days of the date of transfer. When the new servicer provides an initial escrow account statement, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year. In addition, if the new servicer retains the monthly payments and accounting method used by the old servicer, then the new servicer may continue to use the same computation year established by the old servicer or it may choose a different one, using a short-year statement.

Shortages, Surpluses, and Deficiency Requirements (§3500.17(f))

The servicer shall conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists as defined under §3500.17(b).

If the escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to $50. If the surplus is less than $50, the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments. These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

If the escrow account analysis discloses a shortage (a balance less than the target amount) of less than one month's escrow payments, then the servicer has three possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it;
- the servicer may require the borrower to repay the shortage amount within 30 days; or,
- the servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If the shortage is more than or equal to one month's escrow payment, then the servicer has two possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it; or,
- the servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

If the escrow account analysis discloses a deficiency (a negative balance), then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer;

- may allow the deficiency to exist and do nothing to change it;
- may require the borrower to repay the deficiency within 30 days; or,
- may require the borrower to repay the deficiency in two or more equal monthly payments.

If the deficiency is greater than or equal to one month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or require the borrower to repay the deficiency in two or more equal monthly payments.

These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis. A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

Initial Escrow Account Statement (§3500.17(g))

After analyzing each escrow account, the servicer must submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

The initial escrow account statement must include the monthly mortgage payment; the portion going to escrow; itemize

estimated taxes, insurance premiums, and other charges; the anticipated disbursement dates of those charges; the amount of the cushion; and a trial running balance.

Annual Escrow Account Statement (§3500.17(i))

A servicer shall submit to the borrower an annual statement for each escrow account within 30 days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

The annual escrow account statements must contain the account history; projections for the next year; current mortgage payment and portion going to escrow; amount of past year's monthly mortgage payment and portion that went into the escrow account; total amount paid into the escrow account during the past year; amount paid from the account for taxes, insurance premiums, and other charges; balance at the end of the period; explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, the reasons why the estimated low monthly balance was not reached.

Short-year Statements (§3500.17(i)(4))

Short-year statements can be issued to end the escrow account computation year and establish the beginning date of the new computation year. Short-year statements may be provided upon the transfer of servicing and are required upon loan payoff. The statement is due to the borrower within 60 days after receiving the pay-off funds.

Timely Payments (§3500.17(k))

The servicer shall pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Record Keeping (§3500.17(l))

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Penalties (§3500.17(m))

Failure to provide an initial or annual escrow account statement to a borrower can result in the financial institution or the servicer being assessed a civil penalty of $55 for each such failure, with the total for any 12 month period not to exceed $110,000. If the violation is due to intentional disregard, the penalty is $110 for each failure without any annual cap on liability.

Mortgage Servicing Disclosures (§3500.21)

The disclosures related to the transfer of mortgage servicing are required for first mortgage liens, including all refinancing transactions. Subordinate lien loans and open-end lines of credit (home equity plans) that are covered under the TILA and Regulation Z are exempt from this section.

A financial institution that receives an application for a federally related mortgage loan is required to provide the servicing disclosure statement to the borrower at the time of application if there is a face-to-face interview, otherwise within three business days after receipt of the application.

When a federally related mortgage loan is assigned, sold or transferred, the transferor (present servicer) must provide a disclosure at least 15 days before the effective date of the transfer. The same notice from the transferee (new servicer) must be provided not more than 15 days after the effective date of the transfer. Both notices may be combined in one notice if delivered to the borrower at least 15 days before the effective date of the transfer. The disclosure must include:

- The effective date of the transfer.
- The name, address for consumer inquiries, and toll-free or collect-call telephone number of the transferee servicer.
- A toll-free or collect-call telephone number for an employee by the transferor servicer that can be contacted by the borrower to answer servicing questions.
- The date on which the transferor servicer will cease accepting payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. The dates must either be the same or consecutive dates.
- Any information concerning the effect of the transfer on the availability of optional insurance and any action the borrower must take to maintain coverage.
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as related to servicing).
- A statement of the borrower's rights in connection with complaint resolution.

During the 60-day period beginning on the date of transfer, no late fee can be imposed on a borrower who has made the payment to the wrong servicer.

The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

- Transfers between affiliates

- Transfers resulting from mergers or acquisitions of servicers or subservicers
- Transfers between master servicers, when the subservicer remains the same

Servicers Must Respond to Borrower's Inquiries (§3500.21(e))

A financial institution servicer must respond to a borrower's qualified written inquiry and take appropriate action within established time frames after receipt of the inquiry. Generally, the financial institution must provide written acknowledgment within 20 business days, and take certain specified actions within 60 business days of receipt of such inquiry. The inquiry must include the name and account number of the borrower and the reasons the borrower believes the account is in error.

During the 60 business day period following receipt of a qualified written request from a borrower relating to a disputed payment, a financial institution may not provide information regarding any overdue payment, and relating to this period or the qualified written request, to any consumer reporting agency.

Relationship to State Law (§3500.21(h))

Financial institutions complying with the mortgage servicing transfer disclosure requirements of RESPA are considered to have complied with any State law or regulation requiring notice to a borrower at the time of application or transfer of a mortgage.

State laws shall not be affected by the act, except to the extent that they are inconsistent and then only to the extent of the inconsistency. The Secretary of Housing and Urban Development is authorized, after consulting with the appropriate federal agencies, to determine whether such inconsistencies exist.

Penalties and Liabilities (§3500.21(f))

Failure to comply with any provision of §3500.21 will result in actual damages, and where there is a pattern or practice of noncompliance any additional damages in an amount not to exceed $1,000. In class action cases, each borrower will receive actual damages and any additional damages, as the court allows, up to $1,000 for each member of the class, except that the total amount of damages in any class action may not exceed the lesser of $500,000 or one percent of the net worth of the servicer. In addition, costs of the action and attorney fees in case of any successful action.

Examination Objectives

- To determine if the financial institution has established procedures to ensure compliance with RESPA.
- To determine whether the financial institution engages in any practices prohibited by RESPA, such as kickbacks, payment or receipt of referral fees or unearned fees, or excessive escrow assessments.
- To determine if the Special Information Booklet, Good Faith Estimate, Uniform Settlement Statement (Form HUD-1 or HUD 1A), mortgage servicing transfer disclosures, and other required disclosures are in a form that complies with Regulation X, are properly completed, and provided to borrowers within prescribed time periods.
- To determine if the institution is submitting the required initial and annual escrow account statements to borrowers as applicable and complying with established limitations on escrow account arrangements.
- To determine whether the institution is responding to borrower inquiries for information relating to the servicing of their loans in compliance with the provisions of RESPA.

Examination Procedures

If the financial institution has loans covered by the Act, determine whether the institution's policies, practices and procedures are in compliance.

1. Review the types of loans covered by RESPA and applicable exemptions.
2. Review the Special Information Booklet, Good Faith Estimate (GFE) form, Uniform Settlement Statement form (HUD-1 or HUD-1A), mortgage servicing transfer disclosure forms, and affiliated business arrangement disclosure form for compliance with the requirements of Regulation X. Review model forms in the appendices to the regulation and after §3500.21.
3. Review written loan policies and operating procedures in connection with federally related mortgage loans and discuss them with institution personnel.
4. Interview mortgage lending personnel to determine:
   a. Identity of persons or entities referring federally related mortgage loan business;
   b. The nature of services provided by referral sources, if any;
   c. Settlement service providers used by the institution;
   d. When the Special Information Booklet is given;
   e. The timing of the good faith estimate and how fee information is determined;
   f. Any providers whose services are required by the institution;
   g. How borrower inquiries regarding loan servicing are handled and within what time frames; and
   h. Whether escrow arrangements exist on mortgage loans.
5. Assess the overall level of knowledge and understanding of mortgage lending personnel.

Special Information Booklet

6. Determine through discussion with management and review of credit files whether the Special Information Booklet, if required, is provided within 3 business days after the financial institution or broker receives a written application for a loan. [§3500.6(a)(1)]

Good Faith Estimate

7. Determine whether the financial institution provides a good faith estimate of charges for settlement services, if required, within three business days after receipt of a written application. [§3500.7(a)]

8. Review Appendix C of Regulation X to determine if the good faith estimate appears in a similar form and contains the following required elements: [§3500.7(c) and (d)]
   a. The lender's name. If the GFE is being given by a broker, instead of the lender, the GFE must contain a legend in accordance with Appendix C.
   b. An estimate of all charges listed in Section L of the HUD-1 or HUD-1A, expressed either as a dollar amount or range. For "no cost" or "no point" loans, charges to be shown on the GFE including payments to be made to affiliated or independent settlement service providers (shown on HUD-1 or HUD-1A as "paid outside of closing").
   c. An estimate of any other charge the borrower will pay based upon common practice in the locality of the mortgaged property.

9. Review Form HUD-1 or HUD-1A prepared in connection with the transaction to determine if amounts shown on the GFE are reasonably similar to fees actually paid by the borrower. [§3500.7(c)(2)]

   NOTE: the definition of "reasonably" is subject to interpretation by HUD.

10. Determine through review of the institution's good faith estimates, HUD-1 and HUD-1A forms, and discussions with management whether the financial institution requires the borrower to use the services of a particular individual or firm for settlement services. [§3500.7(e)]
    a. In cases where the lender requires the use of a particular provider of a settlement service (except the lender's own employees) AND requires the borrower to pay any portion of the cost, determine if the GFE includes:
       1. The fact that the particular provider is required;
       2. The fact that the estimate is based on the charges of the designated provider;
       3. The name, address, and telephone number of each provider; and
       4. The specific nature of any relationship between the provider and the lender. [§3500.7(e)(2)]

11. If the lender maintains a list of required providers (five or more for each service) and, at the time of application has not chosen the provider to be selected from the list, determine that the lender satisfies the GFE requirements by providing a written statement that the lender will require a particular provider from a lender-controlled list and by providing the range of costs for the required providers. The name and actual cost must be reflected on the HUD-1 or HUD-1A.

Uniform Settlement Statement Form (HUD-1 and HUD-1A)

12. Determine if the financial institution uses the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate [§3500.8 (a)] and that:
    a. Charges are properly itemized for both borrower and seller in accordance with the Instructions for completion of the HUD-1 or HUD-1A (Appendix A).
    b. All charges paid to one other than the lender are itemized and the recipient named. [§3500.8(b); Appendix A]
    c. Charges required by the financial institution but paid outside of closing are itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in totals. [§3500.8(b); Appendix A]

13. If the financial institution conducts settlement, determine whether:
    a. The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement. [§3500.10(a)]
    b. The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement. [§3500.10(b)]
    c. In cases where the right to delivery is waived or the transaction is exempt, the statement is mailed as soon as possible after settlement. [§3500.10(b), (c), and (d)]

14. Determine whether HUD-1 and HUD-1A forms are retained for 5 years. If the financial institution disposes of its interest in the mortgage and does not service the loan, the HUD-1 or HUD-1A form must be transferred with the loan file. [§3500.10(e)]

Mortgage Servicing Transfer Disclosure

15. Determine whether the disclosure form is in substantial conformance with either the model disclosure in Appendix MS-1 to §3500.21 or section 6(a) of RESPA, 12 USC §2605(a).

16. Determine that the applicant received the mortgage servicing transfer disclosure at the time of application or

with the GFE. If the application was not taken face-to-face, the disclosure must have been provided within three business days after receipt of the application or with the GFE.

17. Determine that the disclosure states whether the loan may be assigned or transferred while outstanding. [§3500.21(b)(3)]

Notice to Borrower of Transfer of Mortgage Servicing

18. Determine whether the institution has transferred or received mortgage servicing rights.
19. If it has transferred servicing rights, determine whether notice to the borrower was given at least 15 days prior to the transfer. [§3500.21(d)(2)]
20. If it has received servicing rights, determine whether notice was given to the borrower within 15 days after the transfer. [§3500.21(d)(2)]
21. Determine whether the notice by transferor and transferee includes the following information. Sample language for the notice of transfer is contained in Appendix B. [§3500.21(d)(3)]
    a. The effective date of the transfer;
    b. The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect call telephone number for an employee or department of the transferee servicer;
    c. A toll-free or collect call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;
    d. The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan;
    e. Any information concerning the effect of the transfer on the availability of terms of optional insurance and any action the borrower must take to maintain coverage;
    f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing; and,
    g. A statement of the borrowers rights in connection with complaint resolution. (Appendix MS-2)

Responsibilities of Servicer

22. Through a review of late notices or otherwise if the transferor servicer received payment, determine that no late fees have been imposed and that no payments have been treated as late within 60 days following a transfer of servicing. [§3500.21(d)(5)]
23. Determine that the institution, as loan servicer for mortgage loans and refinancings subject to RESPA, responds to borrower inquiries relating to these loans as prescribed in the regulation, including:
    a. Provide the notice of receipt of inquiry for qualified written correspondence from borrowers within 20-business days (unless the action requested is taken within that period and the borrower is notified in writing of that action); [§3500.21(e)(1)]
    b. Provide written notification of the corrections taken on the account, or statement of the reasons the account is correct or explanation why the information requested is unavailable not later than 60-business days after receipt of the qualified written correspondence from the borrower; and [§3500.21(e)(3)]
    c. Determine that the institution does not provide information to any consumer reporting agency regarding overdue payment when investigating a qualified written request from borrower regarding disputed payments during this 60-business day period. [§3500.21(e)(4)(I)]

No Fees for RESPA Disclosures

24. Determine whether the financial institution charges a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act. [§3500.12]

Purchase of Title Insurance

25. When the financial institution owns the property being sold, determine whether it requires or gives the impression that title insurance is required from a particular company. [§3500.16]

Payment or Receipt of Referral or Unearned Fees

26. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees. [RESPA Section 8; §3500.14]
27. Through interviews with institution management and personnel, file reviews, review of good faith estimates, and HUD-1 and HUD-1A, determine if federally related mortgage loan transactions are referred by brokers, affiliates, or other parties. Identify those parties. Also, identify persons or entities to which the institution refers services in connection with a federally related mortgage transaction.
    a. Identify the types of services rendered by the broker, affiliate, or service provider.
    b. By a review of the institution's general ledger or otherwise, determine if fees were paid to the institution or any parties identified.

c. Confirm that any fees paid to the broker, affiliate, service provider, or other party meet the requirements of §3500.14(g) and are for goods or facilities actually furnished or services actually performed. This includes payments to an affiliate or the affiliate's employees.

Affiliated Business Arrangements

28. Determine from the HUD-1 or HUD-1A and from interviews with institution management if an affiliated business arrangement exists between a referring party and any provider of settlement services. (§3500.15). If so, determine which providers the lender requires and that the Affiliated Business Arrangement disclosures statement (Appendix D) was provided as required by §3500.15(b)(1).
29. Other than an attorney, credit reporting agency, or appraiser representing the lender, was the use of a provider required. [§3500.15(b)(2)]

Escrow Accounts

If the institution maintains escrow accounts in connection with a federally related mortgage loan, complete the following procedures.

30. Determine whether the institution performed an initial escrow analysis [§3500.17(c)(2)] and provided the initial escrow statement required by §3500.17(g). The statement must contain the following:
    a. Amount of monthly payment
    b. Portion of the monthly payment being placed in escrow
    c. Charges to be paid from the escrow account during the first 12 months
    d. Disbursement dates
    e. Amount of cushion
31. Determine if the statement was given to the borrower at settlement or within 45 days after the escrow account was established. This statement may be incorporated into the HUD-1 statement. [§3500.17(g)(1)]
32. Determine whether the institution performs an annual analysis of the escrow account. [§3500.17(c)(3) and (7), and §3500.17(i)]
33. Determine whether the annual escrow account statement is provided to the borrower within 30 days of the end of the computation year [§3500.17(i)]
34. Determine if the annual escrow statement contains the following:
    a. Amount of monthly mortgage payment and portion that was placed in escrow;
    b. Amount of past year's monthly mortgage payment and portion that went into escrow;
    c. Total amount paid into escrow during the past computation year;
    d. Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
    e. Balance in the escrow account at the end of the period;
    f. How a surplus, shortage, or deficiency is to be paid/handled; and,
    g. If applicable, the reason why estimated low monthly balance was not reached.
35. Determine whether monthly escrow payments following settlement are within the limits of §3500.17(c).

Examination Checklist—Real Estate Settlement Procedures Act		
	Yes	**No**
1. Are written loan policies in connection with federally related mortgage loans in compliance with Regulation X?		
2. Does the institution have established operating procedures which address the requirements of Regulation X?		
3. Are mortgage lending personnel knowledgeable of the requirements of RESPAand Regulation X?		
Special Information Booklet		
4. For applicable transactions, is the Special Information Booklet provided within three business days after the financial institution or broker receives or prepares a written application for a loan?		
Good Faith Estimate		
5. Is a good faith estimate of charges for settlement services, if required, provided within three business days after an application is received or prepared?		
6. Does the good faith estimate appear in a similar form as in Appendix C to Regulation X?		
7. Does the good faith contain the following required elements:		
a. The lender's name, or if the GFE is being given by a broker, the legend required in accordance with Appendix C?		
b. An estimate of all charges listed in Section L of the HUD-1 or HUD-1A, expressed either as a dollar amount or range?		
c. For "no cost" or "no point" loans, charges shown on the GFE to include payments to be made to affiliated or independent settlement service providers (shown on HUD-1 or HUD-1A as "paid outside of closing")?		
d. An estimate of any other charge the borrower will pay based upon common practice in the locality of the mortgaged property?		
8. From a review of Form HUD-1 or HUD-1A, prepared in connection with the transaction, are amounts shown on the good faith estimate reasonably similar to fees actually paid by the borrower?		
9. Does the financial institution require the borrower to use the services of a particular individual or firm for settlement services?		
a. In cases where the lender requires the use of a particular provider of a settlement service (except the lender's own employees) AND requires the borrower to pay any portion of the cost, does the GFE include:		
1. The fact that the particular provider is required?		
2. The fact that the estimate is based on the charges of the designated provider?		

	Yes	No
3. The name, address, and telephone number of each provider?		
4. The specific nature of any relationship between the provider and the lender?		
b. If the lender maintains a list of required providers (five or more for each service) and, at the time of application has not chosen the provider to be selected from the list, does the lender satisfy the GFE requirements by providing a written statement that the lender will require a particular provider from a lender-controlled list and by providing the range of costs for the required providers?		
10. If an affiliated business arrangement exists between a referring party and any provider of settlement services, does the lender require the services of particular providers?		
a. If an affiliated business arrangement exists, is the lender's only required use that of the attorney, credit bureau, or appraiser?		
b. Did the financial institution provide the Appendix D disclosure form?		
Uniform Settlement Statement Form (HUD-1 and HUD-1A)		
11. Does the financial institution use the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate?		
12. Does the HUD-1 or HUD-1A contain the following:		
a. Charges properly itemized for both borrower and seller in accordance with the instructions for completion of the HUD-1 or HUD-1A?		
b. All charges paid to one other than the lender itemized and the recipient named?		
c. Charges required by the financial institution but paid outside of closing, itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in totals?		
13. If the financial institution conducts settlement:		
a. Is the borrower, upon request, allowed to inspect the HUD-1 or HUD-1A at least one day prior to settlement?		
b. Is the HUD-1 or HUD-1A provided to the borrower and seller at settlement?		
c. In cases where the right to delivery is waived or the transaction is exempt, is the statement mailed as soon as possible after settlement?		
14. Are the HUD-1 and HUD-1A forms retained for five years?		
Mortgage Servicing Transfer Disclosure		
15. Is the mortgage servicing transfer disclosure form language in substantial conformance with either the model disclosure in Appendix MS-1 to §3500.21 or §(a) or RESPA, 12 USC §2605(a)?		

	Yes	No
16. Does the applicant receive the mortgage servicing transfer disclosure at the time of application or with the GFE, or, if the application was not taken face-to-face, within three business days after receipt of the application or the GFE?		
17. Does the disclosure state whether the loan may be assigned or transferred while outstanding?		
Notice to Borrower of Transfer of Mortgage Servicing		
18. If the institution has transferred servicing rights, was notice to the borrower given at least fifteen days prior to the transfer?		
19. If the institution has received servicing rights, was notice given the borrower within fifteen days after the transfer?		
20. Does the notice by transferor and transferee include the following information as contained in Appendix MS-2 to §3500.21:		
a. The effective date of the transfer?		
b. The new servicer's name, address, and toll-free or collect call telephone number of the transferor servicer?		
c. A toll-free or collect call telephone number of the present Servicer to answer inquiries relating to the transfer?		
d. The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan?		
e. Any information concerning the effect of the transfer on the availability of terms of optional insurance and any action the borrower must take to maintain coverage?		
f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing?		
g. A statement of the borrowers rights in connection with complaint resolution?		
Responding to Borrower Inquiries		
21. Have late fees been imposed within 60 days following a transfer of servicing or were payments treated as late when received by transferor rather than transferee?		
22. Does the institution respond to borrower inquiries relating to servicing of RESPA covered mortgage loans and refinancings as prescribed in the regulation?		
Specifically, does the institution:		
a. Provide a written response acknowledging receipt of a qualified written request from a borrower for information relating to the servicing of the oan within 20-business days?		
b. If not, has the action requested been taken with the 20-business day period and the borrower?		

	Yes	No
c. Within 60-business days after the receipt of a qualified written request, does the institution make appropriate corrections in the account of the borrower and provide a written notification of the correction (including in the notice the name and the telephone number of a representative of the institution who can provide assistance)? OR		
Provide the borrower with a written explanation:		
i. Stating the reasons the account is correct (including the name and telephone number of a representative of the institution who can provide assistance)? OR		
ii. Explaining why the information requested is unavailable or cannot be obtained by the institution (including the name and telephone number of a representative of the institution who can provide assistance)?		
23. Does the institution provide information regarding an overdue payment to any consumer reporting agency during the sixty-day period beginning on the date the institution received any qualified written request relating to a dispute regarding the borrower's payments?		
Escrow Accounts		
24. Does the institution perform an escrow analysis at the creation of the escrow account?		
25. Is the initial escrow statement given to the borrower within forty-five days after the escrow account is established?		
26. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months?		
27. Does the initial annual escrow statement itemize:		
a. Amount of monthly mortgage payment?		
b. Portion of the monthly payment being placed in escrow?		
c. Charges to be paid from the escrow account during the first 12 months?		
d. Disbursement date?		
e. Amount of cushion?		
28. Is the escrow statement provided within thirty days of the completion of the escrow account computation year?		
29. Does the annual escrow statement itemize:		
a. Current mortgage payment and portion going to escrow?		

	Yes	No
b. Amount of last year's mortgage payment and portion that went to escrow?		
c. Total amount paid into the escrow account during the past computation year?		
d. Total amount paid from the escrow account during the year for taxes, insurance premiums, and other charges?		
e. Balance in the escrow account at the end of the period?		
f. Explanation of how any surplus is being handled?		
g. Explanation of how any shortage or deficiency is to be paid by the borrower?		
h. If applicable, the reason(s) why the estimated low monthly balance was not reached?		
30. Are monthly escrow payments following settlement no larger than 1/12 of the amount expected to be paid for taxes, insurance premiums, and other charges in the following twelve months, plus 1/6 of that amount?		
31. Does the servicer notify the borrower at least annually of any shortage or deficiency in the escrow account?		
32. Does the institution make payments from the escrow account for taxes, insurance premiums and other charges in a timely manner as they become due?		
No Fees for RESPA Disclosures		
33. Does the financial institution charge a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act?		
Purchase of Title Insurance		
34. When the financial institution owns the property being sold, does it require or give the impression that title insurance is required from a particular company?		
Payment or Receipt of Referral or Unearned Fees		
35. Is institution management aware of the prohibitions against payment or receipt of kickbacks and unearned fees?		
36. Are federally related mortgage loan transactions referred by brokers, affiliates, or other parties? OR		
Does the institution refer services to brokers, affiliates, or other parties?		
37. If fees were paid to the institution or any parties identified:		
a. Were all fees paid to the broker, affiliate, service provider, or other party consistent with the requirements of §3500.14(g) and for goods or facilities actually furnished or services actually performed?		
b. Were payments made to an affiliate or the affiliate's employees?		

References

12 USC §2601: Real Estate Settlement Procedures Act of 1974
http://www.fdic.gov/regulations/laws/rules/6500-2530.html#6500respao1974

24 CFR §3500: Real Estate Settlement Procedures Act
http://www.fdic.gov/regulations/laws/rules/6500-2520.html#6500res3500.1

DSC Memoranda

DSC RD Memo 2004-16: Revised FFIEC Examination Procedures for RESPA Servicing Rights Notice
ttp://fdic01/division/dsc/memos/memos/6000/04-016.pdf.

DCA RD Memo 99-007: Guidance for Assessing Compliance with Disclosure of Hazard Insurance Premiums under the Real Estate Settlement Procedures Act (RESPA)
http://fdic01/division/dsc/memos/memos/direct/6436.pdf

DCA RD Memo 00-002: Real Estate Settlement Procedures Act: HUD Clarification
http://fdic01/division/dsc/memos/memos/direct/6436-2.pdf

Financial Institution Letters

FIL 45-2000: Guidance on Completing HUD-1, HUD-1A and Good Faith Estimate Forms for Home Mortgage Loans
http://www.fdic.gov/news/news/financial/2000/fil0045.html.

FIL 103-99: Potential Violations of Section 8 of the Real Estate Settlement Procedures Act
http://www.fdic.gov/news/news/financial/1999/fil99103.html.

FIL 21-99: HUD Policy Statement on Lender Payments to Mortgage Brokers
http://www.fdic.gov/news/news/financial/1999/fil9921.html.

FIL 61-97: Revisions to HUD's Special Information Booklet for Applications of Residential Real Estate Loans
http://www.fdic.gov/news/news/financial/1997/fil9761.html.

Job Aids

RESPA Escrow Program
The RESPA Escrow Program is an efficient tool for determining whether a financial institution is properly calculating and disclosing escrow account information as required under §3500.17 of the Department of Housing and Urban Development's Regulation X.
http://www.fdic.gov/regulations/compliance/respa/index.html

Homeownership Counseling Act[1]

Introduction

Section 106(c)(5) of the Housing and Urban Development Act of 1968 (the Act) (12 U.S.C. 1701x (c)(5)) provides for homeownership counseling notification by creditors to eligible homeowners. The Act has been amended at various times, with the most recent amendment on November 26, 2001, when the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2002 (Pub. L. 107-73) was enacted. Section 205 of that Act repealed the previous sunset provision.

Statutory Overview

Applicability

All creditors that service loans secured by a mortgage or lien on a one-family residence (home loans) are subject to the homeownership counseling notification requirements. Home loans include conventional mortgage loans and loans insured by the Department of Housing and Urban Development (HUD).

Requirements

Notice Requirements[2]

A creditor must provide notification of the availability of homeownership counseling to a homeowner, eligible for counseling, who fails to pay any amount by the due date under the terms of the home loan.

Eligibility

A homeowner is eligible for counseling if:

- The loan is secured by the homeowner's principal residence;
- The home loan is not assisted by the Farmers Home Administration; and
- The homeowner is, or is expected to be, unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments due to a reduction in the homeowner's income because of:
  - An involuntary loss of, or reduction in, the homeowner's employment, the homeowner's self-employment, or income from the pursuit of the homeowner's occupation; or
  - Any similar loss or reduction experienced by any person who contributes to the homeowner's income.

Contents of Notice

The notice must:

- notify the homeowner of the availability of any homeownership counseling offered by the creditor; and
- provide either a list of HUD-approved nonprofit homeownership counseling organizations or the toll-free number[3] HUD has established through which a list of such organizations may be obtained.

Timing of Notice

The notice must be given to a delinquent homeowner borrower no later than 45 days after the date on which the homeowner becomes delinquent. If, within the 45-day period, the borrower brings the loan current again, no notification is required.

Definitions

For purposes of these requirements, the following definitions apply:

"Creditor" means a person or entity that is servicing a home loan on behalf of itself or another person or entity.

"Home loan" means a loan secured by a mortgage or lien on residential property.

"Homeowner" means a person who is obligated under a home loan.

"Residential property" means a 1-family residence, including a 1-family unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

Examination Objective

The examination objective is to determine whether the financial institution has established procedures regarding homeownership counseling notification to ensure that it complies with the provisions of §106(c)(5) of the Housing and Urban Development Act of 1968.

Examination Procedures

Determine if the financial institution is informing eligible homeowners, within 45 days of initial loan default, of:

- the availability of any homeownership counseling offered by the creditor; and

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 03-047: Revised Interagency Examination Procedures for the Homeownership Counseling Notification.

[2] The FFIEC Consumer Compliance Task Force has requested clarification from HUD on HUD's current position regarding notice requirements to first-time homebuyers. These interagency examination procedures are currently limited to determining compliance with the Act's notice provisions related to delinquent borrowers. However, should a response from HUD to the Task Force indicate that notices to first-time homebuyers should be provided under the Act, the agencies will expand these examination procedures to cover notices to first-time homebuyers.

[3] The number is 1-800-569-4287.

- the availability of any homeownership counseling by nonprofit organizations approved by HUD or the toll-free telephone number through which the homeowner can obtain a list of such organizations.

Examination Checklist

Does the financial institution notify eligible homeowners, within 45 days of initial loan default, of any homeownership counseling the institution (creditor) provides?

Does the financial institution provide eligible homeowners with the names of nonprofit organizations approved by HUD or the toll-free telephone number to obtain a list of such organizations?

References

The Housing and Urban Development Act of 1968 (12 USC 1701x(c)(5)), §106(c).
There are no regulations relating to this requirement.

FIL 43-2002: Homeownership Counseling Notification Requirements
http://www.fdic.gov/news/news/financial/2002/fil0243.html

DSC RD Memo 03-047: FFIEC Examination Procedures
http://fdic01/division/dsc/memos/memos/6000/03-047.pdf

The HUD toll-free number to locate an approved housing counselor is: **1-800-569-4287**.

The HUD internet site to locate a list of counselors is:
http://www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm

Homeowners Protection Act[1]

Introduction

The Homeowners Protection Act of 1998 (the Act) was signed into law on July 29, 1998, and became effective on July 29, 1999. The Act was amended on December 27, 2000, to provide technical corrections and clarification. The Act, also known as the "PMI Cancellation Act," addresses homeowners' difficulties in canceling private mortgage insurance (PMI)[2] coverage. It establishes provisions for canceling and terminating PMI, establishes disclosure and notification requirements, and requires the return of unearned premiums.

PMI is insurance that protects lenders from the risk of default and foreclosure. PMI allows prospective buyers who cannot, or choose not to, provide significant down payments to obtain mortgage financing at affordable rates. It is used extensively to facilitate "high-ratio" loans (generally, loans in which the loan to value (LTV) ratio exceeds 80 percent). With PMI, the lender can recover costs associated with the resale of foreclosed property, and accrued interest payments or fixed costs, such as taxes or insurance policies, paid prior to resale.

Excessive PMI coverage provides little extra protection for a lender and does not benefit the borrower. In some instances, homeowners have experienced problems in canceling PMI. At other times, lenders may have agreed to terminate coverage when the borrower's equity reached 20 percent, but the policies and procedures used for canceling or terminating PMI coverage varied widely among lenders. Prior to the Act, homeowners had limited recourse when lenders refused to cancel their PMI coverage. Even homeowners in the few states that had laws pertaining to PMI cancellation or termination noted difficulties in canceling or terminating their PMI policies. The Act now protects homeowners by prohibiting life of loan PMI coverage for borrower-paid PMI products and establishing uniform procedures for the cancellation and termination of PMI policies.

Regulation Overview

Scope and Effective Date

The Act applies primarily to "residential mortgage transactions," defined as mortgage loan transactions consummated on or after July 29, 1999, to finance the acquisition, initial construction, or refinancing[3] of a single-family dwelling that serves as a borrower's principal residence.[4] The Act also includes provisions for annual written disclosures for "residential mortgages," defined as mortgages, loans or other evidences of a security interest created for a single-family dwelling that is the principal residence of the borrower (12 USC §4901(14) and (15)). A condominium, townhouse, cooperative, or mobile home is considered to be a single-family dwelling covered by the Act.

The Act's requirements vary depending on whether a mortgage is:

- A "residential mortgage" or a "residential mortgage transaction";
- Defined as high risk (either by the lender in the case of non-conforming loans, or Fannie Mae and Freddie Mac in the case of conforming loans);
- Financed under a fixed or an adjustable rate; or
- Covered by borrower-paid private mortgage insurance (BPMI) or lender-paid private mortgage insurance (LPMI).[5]

Cancellation and Termination of PMI for Non High Risk Residential Mortgage Transactions

Borrower Requested Cancellation

A borrower may initiate cancellation of PMI coverage by submitting a written request to the servicer. The servicer must take action to cancel PMI when the cancellation date occurs, which is when the principal balance of the loan reaches (based on actual payments) or is first scheduled to reach 80 percent of the "original value,"[6] irrespective of the outstanding balance, based upon the initial amortization schedule (in the case of a fixed rate loan) or amortization schedule then in effect (in the case of an adjustable rate loan[7]), or any date thereafter that:

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 03-049: Revised Interagency Examination Procedures for the Homeowners Protection Act.

[2] The Act does not apply to mortgage insurance made available under the National Housing Act, title 38 of the United States Code, or title V of the Housing Act of 1949. This includes mortgage insurance on loans made the Federal Housing Administration and guarantees on mortgage loans made by the Veterans Administration.

[3] For purposes to these procedures, "refinancing" means the refinancing of loans any portion of which was to provide financing for the acquisition or initial construction of a single-family dwelling that serves as a borrower's principal residence. ***See*** 15 USC §1601 *et seq*. and 12 CFR §226.20.

[4] For purposes of these procedures, junior mortgages that provide financing for the acquisition, initial construction or refinancing of a single-family dwelling that serves as a borrower's principal residence are covered.

[5] All sections of these procedures and Handbook apply to BPMI. For LPMI, relevant sections begin under that heading and follow thereafter.

[6] "Original value" is defined as the lesser of the sales price of the secured property as reflected in the purchase contract or, the appraised value at the time of loan consummation. In the case of a refinancing, the term means the appraised value relied upon by the lender to approve the refinance transaction.

[7] The Act includes as an adjustable rate mortgage, a balloon loan that "contains a conditional right to refinance or modify the unamortized principal at the maturity date." Therefore, if a balloon loan contains a conditional right to refinance, the initial disclosure for an adjustable rate mortgage would be used even if the interest rate is fixed.

- the borrower submits a written cancellation request;
- the borrower has a good payment history;[8]
- the borrower is current;[9] and
- the borrower satisfies any requirement of the mortgage holder for: (i) evidence of a type established in advance that the value of the property has not declined below the original value; and (ii) certification that the borrower's equity in the property is not subject to a subordinate lien (12 USC §4902(a)(4)).

Once PMI is canceled, the servicer may not require further PMI payments or premiums more than 30 days after the later of: (i) the date on which the written request was received or (ii) the date on which the borrower satisfied the evidence and certification requirements of the mortgage holder described previously (12 USC §4902(e)(1)).

Automatic Termination

The Act requires a servicer to automatically terminate PMI for residential mortgage transactions on the date that:

- the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the secured property (based solely on the initial amortization schedule in the case of a fixed rate loan or on the amortization schedule then in effect in the case of an adjustable rate loan, irrespective of the outstanding balance), if the borrower is current; or
- if the borrower is not current on that date, on the first day of the first month following the date that the borrower becomes current (12 USC §4902(b)).

If PMI is terminated, the servicer may not require further payments or premiums of PMI more than 30 days after the termination date or the date following the termination date on which the borrower becomes current on the payments, whichever is sooner (12 USC §4902(e)(2)).

There is no provision in the automatic termination section of the Act, as there is with the borrower-requested PMI cancellation section, that protects the lender against declines in property value or subordinate liens. The automatic termination provisions make no reference to good payment history (as prescribed in the borrower-requested provisions), but state only that the borrower must be current on mortgage payments (12 USC §4902(b)).

[8] A borrower has a good payment history if the borrower: (1) has not made a payment that was 60 days or more past due within the first 12 months of the last 2 years prior to the later of the cancellation date, or the date that the borrower requests cancellation; or (2) has not made a payment that was 30 days or more past due within the 12 months prior to the later of the cancellation date or the date that the borrower requests cancellation.

[9] The Act does not define current.

Final Termination

If PMI coverage on a residential mortgage transaction was not canceled at the borrower's request or by the automatic termination provision, the servicer must terminate PMI coverage by the first day of the month immediately following the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments required by the terms of the mortgage (12 USC §4902(c)). (If the borrower is not current on that date, PMI should be terminated when the borrower does become current.)

The midpoint of the amortization period is halfway through the period between the first day of the amortization period established at consummation and ending when the mortgage is scheduled to be amortized. The servicer may not require further payments or premiums of PMI more than 30 days after PMI is terminated (12 USC §4902(e)(3)).

Loan Modifications

If a borrower and mortgage holder agree to modify the terms and conditions of a loan pursuant to a residential mortgage transaction, the cancellation, termination or final termination dates shall be recalculated to reflect the modification (12 USC §4902(d)).

Exclusions

The Act's cancellation and termination provisions do not apply to residential mortgage transactions for which Lender Paid Mortgage Insurance (LPMI) is required (12 USC §4905(b)).

Return of Unearned Premiums

The servicer must return all unearned PMI premiums to the borrower within 45 days after cancellation or termination of PMI coverage. Within 30 days after notification by the servicer of cancellation or termination of PMI coverage, a mortgage insurer must return to the servicer any amount of unearned premiums it is holding to permit the servicer to return such premiums to the borrower (12 USC §4902(f)).

Accrued Obligations for Premium Payments

The cancellation or termination of PMI does not affect the rights of any lender, servicer or mortgage insurer to enforce any obligation of a borrower for payments of premiums that accrued before the cancellation or termination occurred (12 USC §4902 (h)).

Exceptions to Cancellation and Termination Provisions for High Risk Residential Mortgage Transactions

The borrower-requested cancellation at 80 percent LTV and the automatic termination at 78 percent LTV requirements of the Act do not apply to "high risk" loans. However, high-risk loans are subject to final termination and are divided into two

categories - conforming (Fannie Mae/Freddie Mac-defined high risk loans) and non-conforming (lender-defined high risk loans) (12 USC §4902(g)(1)).

Conforming Loans (Fannie Mae/Freddie Mac-Defined High Risk Loans)

Conforming loans are those loans with an original principal balance not exceeding Freddie Mac's and Fannie Mae's conforming loan limits.[10] Fannie Mae and Freddie Mac are authorized under the Act to establish a category of residential mortgage transactions that are not subject to the Act's requirements for borrower-requested cancellation or automatic termination, because of the high risk associated with them.[11] They are however, subject to the final termination provision of the Act. As such, PMI on a conforming high risk loan must be terminated by the first day of the month following the date that is the midpoint of the loan's initial amortization schedule (in the case of a fixed rate loan) or amortization schedule then in effect (in the case of an adjustable rate loan) if, on that date, the borrower is current on the loan (12 USC § 4902(g)). (If the borrower is not current on that date, PMI should be terminated when the borrower does become current.)

Non-Conforming Loans (Lender-Defined High Risk Loans)

Non-conforming loans are those residential mortgage transactions that have an original principal balance exceeding Freddie Mac's and Fannie Mae's conforming loan limits. Lender-defined high-risk loans are not subject to the Act's requirements for borrower-requested cancellation or automatic termination. However, if a residential mortgage transaction is a lender-defined high risk loan, PMI must be terminated on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan) for that mortgage and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

Like conforming loans that are determined to be high risk by Freddie Mac and Fannie Mae, a residential mortgage transaction that is a lender-defined high-risk loan is subject to the final termination provision of the Act.

Notices

The lender must provide written initial disclosures at consummation for all high-risk residential mortgage transactions (as defined by the lender or Fannie Mae or Freddie Mac), that in no case will PMI be required beyond the midpoint of the amortization period of the loan, if the loan is current. More specific notice as to the 77 percent LTV termination standards for lender defined high-risk loans is not required under the Act.

Basic Disclosure and Notice Requirements Applicable to Residential Mortgage Transactions and Residential Mortgages

The Act requires the lender in a residential mortgage transaction to provide to the borrower, at the time of consummation, certain disclosures that describe the borrower's rights for PMI cancellation and termination. A borrower may not be charged for any disclosure required by the Act. Initial disclosures vary, based upon whether the transaction is a fixed rate mortgage, adjustable rate mortgage, or high-risk loan. The Act also requires that the borrower be provided with certain annual and other notices concerning PMI cancellation and termination. Residential mortgages are subject to certain annual disclosure requirements.

Initial Disclosures for Fixed Rate Residential Mortgage Transactions

When PMI is required for non high risk fixed rate mortgages, the lender must provide to the borrower at the time the transaction is consummated: (i) a written initial amortization schedule, and (ii) a written notice that discloses:

- The borrower's right to request cancellation of PMI, and, based on the initial amortization schedule, the date the loan balance is scheduled to reach 80 percent of the original value of the property;
- The borrower's right to request cancellation on an earlier date, if actual payments bring the loan balance to 80 percent of the original value of the property sooner than the date based on the initial amortization schedule;
- That PMI will automatically terminate when the LTV ratio reaches 78 percent of the original value of the property and the specific date that is projected to occur (based on the initial amortization schedule); and,
- The Act provides for exemptions to the cancellation and automatic termination provisions for high risk mortgages and whether these exemptions apply to the borrower's loan (12 USC §4903(a)(1)(A)).

Initial Disclosures for Adjustable Rate Residential Mortgage Transactions

When PMI is required for non high-risk adjustable rate mortgages, the lender must provide to the borrower at the time the transaction is consummated a written notice that discloses:

- The borrower's right to request cancellation of PMI on (i) the date the loan balance is first scheduled to reach 80 percent of the original value of the property based on the amortization schedule then in effect or (ii) the date the

[10] This limit was $322,700 in 2003.

[11] Fannie Mae and Freddie Mac have not defined high-risk loans as of the date of this publication.

balance actually reaches 80 percent of the original value of the property based on actual payments. The notice must also state that the servicer will notify the borrower when either (i) or (ii) occurs;

- That PMI will automatically terminate when the loan balance is first scheduled to reach 78 percent of the original value of the property based on the amortization schedule then in effect. The notice must also state that the borrower will be notified when PMI is terminated (or that termination will occur when the borrower becomes current on payments); and,
- That there are exemptions to the cancellation and automatic termination provisions for high-risk mortgages and whether such exemptions apply to the borrower's loan (12 USC §4903(a)(1)(B)).

Initial Disclosures for High Risk Residential Mortgage Transactions

When PMI is required for high risk residential mortgage transactions, the lender must provide to the borrower a written notice stating that PMI will not be required beyond the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments as required by the terms of the loan. The lender must provide this notice at consummation. The lender need not provide disclosure of the termination at 77 percent LTV for lender defined high-risk mortgages (12 USC §4903(a)(2)).

Annual Disclosures for Residential Mortgage Transactions

For all residential mortgage transactions, including high risk mortgages for which PMI is required, the servicer must provide the borrower with an annual written statement that sets forth the rights of the borrower to PMI cancellation and termination and the address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel PMI (12 USC §4903(a)(3)).

Disclosures for Existing Residential Mortgages

When PMI was required for a residential mortgage consummated before July 29, 1999, the servicer must provide to the borrower an annual written statement that:

- States that PMI may be canceled with the consent of the lender or in accordance with state law; and
- Provides the servicer's address and telephone number, so that the borrower may contact the servicer to determine whether the borrower may cancel PMI (12 USC §4903(b)).

Notification Upon Cancellation or Termination of PMI Relating to Residential Mortgage Transactions

General

The servicer must, not later than 30 days after PMI relating to a residential mortgage transaction is canceled or terminated, notify the borrower in writing that:[12]

- PMI has terminated and the borrower no longer has PMI; and
- No further premiums, payments or other fees are due or payable by the borrower in connection with PMI (12 USC §4904(a)).

Notice of Grounds/Timing

If a servicer determines that a borrower in a residential mortgage transaction does not qualify for PMI cancellation or automatic termination, the servicer must provide the borrower with a written notice of the grounds relied on for that determination. If an appraisal was used in making the determination, the servicer must give the appraisal results to the borrower. If a borrower does not qualify for cancellation, the notice must be provided not later than 30 days following the later of: (i) the date the borrower's request for cancellation is received; or (ii) the date on which the borrower satisfies any evidence and certification requirements of the mortgage holder. If the borrower does not meet the requirements for automatic termination, the notice must be provided not later than 30 days following the scheduled termination date (12 USC §4904(b)).

Disclosure Requirements for Lender-Paid Mortgage Insurance

Definitions

Borrower paid mortgage insurance (BPMI) means PMI is required for a residential mortgage transaction, the payments for which are made by the borrower.

Lender paid mortgage insurance (LPMI) means PMI that is required for a residential mortgage transaction, the payments for which are made by a person other than the borrower.

Loan commitment means a prospective lender's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective borrower for a residential mortgage loan (12 USC 4905(a)).

Initial Notice

In the case of LPMI required for a residential mortgage transaction, the Act requires that the lender provide a written

[12] For adjustable rate mortgages, the initial notice to borrowers must state that the servicer will notify the borrower when the cancellation and automatic termination dates are reached (12 USC §4903(a)(1)(B). Servicers should take care that the appropriate notices are made to borrowers when those dates are reached.

notice to the borrower not later than the date on which a loan **commitment** is made. The written notice must advise the borrower of the differences between LPMI and BPMI by notifying the borrower that LPMI:

- Differs from BPMI because it cannot be canceled by the borrower or automatically terminated as provided under the Act;
- Usually results in a mortgage having a higher interest rate than it would in the case of BPMI; and,
- Terminates only when the mortgage is refinanced (as that term is defined in the Truth in Lending Act, 15 U.S..C. §1601 et seq., and Regulation Z, 12 CFR §226.20), paid off, or otherwise terminated.

The notice must also provide:

- That LPMI and BPMI have both benefits and disadvantages;
- A generic analysis of the costs and benefits of a mortgage in the case of LPMI versus BPMI over a ten-year period, assuming prevailing interest and property appreciation rates; and,
- That LPMI may be tax-deductible for federal income taxes, if the borrower itemizes expenses for that purpose (12 USC §4905(c)(1)).

Notice at Termination Date

Not later than 30 days after the termination date that would apply in the case of BPMI, the servicer shall provide to the borrower a written notice indicating that the borrower may wish to review financing options that could eliminate the requirement for LPMI in connection with the mortgage (12 USC §4905(c)(2)).

Fees for Disclosures

As stated previously, no fee or other cost may be imposed on a borrower for the disclosures or notifications required to be given to a borrower by lenders or servicers under the Act (12 USC §4906).

Civil Liability

Liability Dependent upon Type of Action

Servicers, lenders and mortgage insurers that violate the Act are liable to borrowers as follows:

- Individual Action
  - In the case of individual borrowers:
    - — Actual damages (including interest accruing on such damages);
    - — Statutory damages not to exceed $2,000;
    - — Costs of the action, and
    - — Reasonable attorney fees.
- Class Action
  - In the case of a class action suit against a defendant that is subject to section 10 of the Act, (i.e., regulated by the federal banking agencies, NCUA or the Farm Credit Administration):
    - — Such statutory damages as the court may allow up to the lesser of $500,000 or 1 percent of the liable party's net worth;
    - — Costs of the action; and
    - — Reasonable attorney fees.
  - In the case of a class action suit against a defendant that is not subject to section 10 of the Act, (i.e., not regulated by the federal banking agencies, NCUA, or the Farm Credit Administration):
    - — Actual damages (including interest accruing on such damages);
    - — Statutory damages up to $1,000 per class member but not to exceed the lesser of $500,000; or 1 percent of the liable party's gross revenues;
    - — Costs of the action; and
    - — Reasonable attorney fees (12 USC §4907(a)).

Statute of Limitations

A borrower must bring an action under the Act within two years after the borrower discovers the violation (12 USC §4907(b)).

Mortgage Servicer Liability Limitation

A servicer shall not be liable for its failure to comply with the requirements of the Act if the servicer's failure to comply is due to the mortgage insurer's or lender's failure to comply with the Act (12 USC §4907(c)).

Enforcement

The Act directs the federal banking agencies to enforce the Act under 12 USC §1818 or any other authority conferred upon the agencies by law. Under the Act the agencies shall:

- Notify applicable lenders or servicers of any failure to comply with the Act;
- Require the lender or servicer, as applicable, to correct the borrower's account to reflect the date on which PMI should have been canceled or terminated under the Act; and,
- Require the lender or servicer, as applicable, to return unearned PMI premiums to a borrower who paid premiums after the date on which the borrower's obligation to pay PMI premiums ceased under the Act (12 USC §4909).

Examination Objectives

The objectives of the examination are:

1. To determine the financial institution's compliance with the Homeowners Protection Act of 1998 (HOPA), as amended.
2. To assess the quality of the financial institution's policies and procedures for implementing the HOPA.
3. To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the institution's compliance with the HOPA.
4. To initiate corrective action when violations of HOPA are identified, or when policies or internal controls are deficient.

Examination Procedures

1. Through discussions with management and review of available information, determine if the institution's internal controls are adequate to ensure compliance with the HOPA. Consider the following:
   a. Organization charts;
   b. Process flowcharts;
   c. Policies and procedures;
   d. Loan documentation;
   e. Checklists;
   f. Training; and,
   g. Computer program documentation.
2. Review any compliance audit material, including work papers and reports, to determine whether:
   a. The institution's procedures address all applicable provisions of HOPA;
   b. Steps are taken to follow-up on previously identified deficiencies;
   c. The procedures used include samples covering all product types and decision centers;
   d. The compliance audit work performed is accurate;
   e. Significant deficiencies and their causes are included in reports to management and/or to the Board of Directors;
   f. Corrective action is taken in a timely and appropriate manner; and
   g. The frequency of compliance review is appropriate.
3. Obtain a sample of recent residential mortgage transactions, including those serviced by the bank and conducted electronically, if applicable. Complete the Homeowners Protection Act worksheet (page V-5.8). Also, obtain a copy of the bank's disclosure and notification forms and policies and procedures to complete the worksheet. As applicable, the forms should include:
   a. Initial disclosures for: (i) fixed rate mortgages; (ii) adjustable rate mortgages; (iii) high risk loans; and (iv) lender-paid mortgage insurance.
   b. Annual notices for: (i) fixed and adjustable rate mortgages and high-risk loans and (ii) existing residential mortgages.
   c. Notices of: (i) cancellation; (ii) termination; (iii) grounds for not canceling PMI; (iv) grounds for not terminating PMI; (v) cancellation date for adjustable rate mortgages; and (vi) termination date for lender paid mortgage insurance.
4. Using the above sample and bank policies and procedures, determine that borrowers are not charged for any required disclosures or notifications (12 USC §4906).
5. Obtain and review a sample of recent written requests from borrowers to cancel their private mortgage insurance (PMI) on "non-high risk" residential mortgage transactions. Verify that the insurance was canceled on either: (a) the date on which the principal balance of the loan was first scheduled to reach 80 percent of the original value of the property based on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan); or (b) the date on which the principal balance of the loan actually reached 80 percent of the original value of the property based on actual payments, in accordance with the applicable provisions in 12 USC §4902(a) of HOPA (i.e., good payment history, current payments and, if required by the lender, evidence that the value of the mortgaged property did not decline, and certification that the borrower's equity was unencumbered by a subordinate lien) (12 USC §4902(a)).
6. Obtain and review a sample of "non-high risk" PMI residential mortgage transactions where the borrower did not request cancellation. Select loans from the sample that have reached a 78 percent or lower LTV ratio based on the original value of the property and that are current. Verify that PMI was terminated, based on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan) on the date that the principal balance of the loan was first scheduled to reach 78 percent of the original value of the mortgaged property (if the borrower was current) or on the first day of the first month after the date that the borrower became current (12 USC §4902(b)).
7. Obtain a sample of PMI-covered residential mortgage transactions (including high risk loans, if any) that are at or beyond the midpoint of their amortization period. Determine whether PMI was terminated by the first day of the following month if the loan was current. If the loan was not current at the midpoint, determine that PMI was terminated by the first day of the month following the day

the loan became current. If, at the time of the examination, a loan at the midpoint is not current, determine whether the financial institution is monitoring the loan and has systems in place to ensure that PMI is terminated when the borrower becomes current (12 USC §4902(c) and 12 USC §4902(g)(2)).

8. Obtain a sample of any lender defined "high risk" PMI residential mortgage transactions that have a 77 percent or lower LTV based on the original value of the property. Verify that PMI was canceled, based on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan), on the date that the principal balance of the loan was scheduled to reach 77 percent of the original value of the mortgaged property (12 USC §4902(g)(1)(B)).
9. Obtain a sample of loans that have had PMI canceled or terminated (the samples obtained above can be used). For PMI loans canceled upon the borrowers' requests, determine that the financial institution did not require any PMI payment(s) beyond 30 days of the borrower satisfying the evidence and certification requirements to cancel PMI (12 USC §4902(e)(1)). For the PMI loans that received automatic termination or final termination, determine that the financial institution did not require any PMI payment(s) beyond 30 days of termination (12 USC §4902(e)(2) and 12 USC §4902(e)(3)).
10. Using the samples in steps 5, 6, and 7, determine if the financial institution returned unearned premiums, if any, to the borrower within 45 days after cancellation or termination (12 USC §4902(f)(1)).

Conclusions

11. Summarize all violations and internal deficiencies.
12. If the violation(s) or internal deficiencies noted above represent(s) a pattern or practice, determine the root cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other factors.
13. Identify action needed to correct violations and weaknesses in the institution's compliance system, as appropriate.
14. Discuss findings with the institution's management and obtain a commitment for corrective action.
15. Determine if enforcement action is appropriate. If so, contact appropriate agency personnel for guidance. Section 10(c) of the Act contains a provision requiring restitution of unearned PMI premiums.

References

FIL 50-99: Homeowners Protection Act of 1998
http://www.fdic.gov/news/news/financial/1999/fil9950.html

DSC RD Memo 03-049: Revised Interagency Examination Procedures for the Homeowners Protection Act
http://fdic01/division/dsc/memos/memos/6000/03-049.pdf

DCA RD Memo 99-011: Questions and Answers regarding the Homeowners Protection Act of 1998
http://fdic01/division/dsc/memos/memos/direct/6487.pdf

12 USC §§4901 – 4910 (2001)
[not found in FDIC Laws, Regulations and Related Acts]
http://www.access.gpo.gov/uscode/title12/chapter49_.html

Job Aids

Homeowners Protection Act Worksheet

Use this worksheet to perform transactional testing. Answer the following questions with a "Yes" (Y) or a "No" (N) answer. Every "No" answer indicates a violation of law or an internal deficiency and must be explained fully in the work papers.

Homeowner Protection Act Worksheet		
	Yes	**No**
1. Does the lender provide written initial disclosures at consummation for fixed rate residential mortgage transactions that include:		
a. A written amortization schedule? (12 USC §4903(a)(1)(A)(i))		
b. A notice that the borrower may submit a written request to cancel PMI as of the date that, based on the initial amortization schedule, the principal balance is first scheduled to reach 80 percent of the original value of the mortgaged property, irrespective of the outstanding balance of the mortgage, or based on actual payments, when the principal balance reaches 80 percent of the original value of the mortgaged property (or any later date) and the borrower has a good payment history, is current on payments, and has satisfied the lender's requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens? (12 USC §4903(a)(1)(A)(ii)(I) and (II))		
c. The specific date, based on the initial amortization schedule, the loan balance is scheduled to reach 80 percent of the original value of the mortgaged property? (12 USC §4903(a)(1)(A)(ii)(I))		
d. A notice that PMI will automatically terminate on the date that, based on the amortization schedule and irrespective of the outstanding balance of the mortgage, the principal balance is first scheduled to reach 78 percent of the original value of the mortgaged property if the loan is current or on the first day of the first month after the date that the loan becomes current? (12 USC §4903(a)(1)(A)(ii)(III))		
e. The specific date the loan balance is scheduled to reach 78 percent LTV? (12 USC §4903(a)(1)(A)(ii)(III))		
f. Notice that exemptions to the right to cancel and automatic termination exist for high-risk loans and whether such exemptions apply? (12 USC §4903(a)(1)(A)(ii)(IV))		
2. Does the lender provide written initial disclosures at consummation for adjustable rate residential mortgage transactions that include a notice that:		
a. The borrower may submit a written request to cancel PMI as of the date that, based on the amortization schedule then in effect and irrespective of the outstanding balance of the mortgage, the principal balance is first scheduled to reach 80 percent of the original value of the mortgaged property or based on actual payments, when the principal balance actually reaches 80 percent of the original value of the mortgaged property (or any later date), and the borrower has a good payment history, the loan is current, and the borrower has satisfied the lender requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens? (12 USC §4903(a)(1)(B)(i)) b. The servicer will notify the borrower when the cancellation date is reached, i.e., when the loan balance represents 80 percent of the original value of the mortgaged property? (12 USC §4903(a)(1)(B)(i))		

	Yes	No
c. PMI will automatically terminate when the loan balance is first scheduled to reach 78 percent of the original value of the mortgaged property irrespective of the outstanding balance of the mortgage if the loan is current, or on the first day of the first month after the date that the loan becomes current? (12 USC §4903(a)(1)(B)(ii))		
d. On the termination date the borrower will be notified of the termination or the fact that PMI will be terminated on the first day of the first month after the date that the loan becomes current? (12 USC §4903(a)(1)(B)(ii))		
e. Exemptions to the right to cancel and automatic termination exist for high-risk loans and whether such exemptions apply? (12 USC §4903(a)(1)(B)(iii))		
3. Does the lender have established standards regarding the type of evidence it requires borrowers to provide to demonstrate that the value of the mortgage property has not declined and are they provided when a request for cancellation occurs? (12 USC §4902(a)(4)(A))		
4. Does the lender provide written initial disclosures at consummation for high risk residential mortgage transactions (as defined by the lender or Fannie Mae or Freddie Mac), that PMI will not be required beyond the midpoint of the amortization period of the loan, if the loan is current? (12 USC §4903(a)(2))		
5. If the financial institution acts as servicer for residential mortgage transactions, does it provide an annual written statement to the borrowers explaining their rights to cancel or terminate PMI and an address and telephone number to contact the servicer to determine whether they may cancel PMI? (12 USC §4903(a)(3)) *Note: This disclosure may be included on RESPA's annual escrow account disclosure or IRS interest payment disclosures.*		
6. If the financial institution acts as servicer, does it provide an annual written statement to each borrower who entered into a residential mortgage prior to July 29, 1999, that includes:		
a. A statement that PMI may, under certain circumstances, be canceled by the borrower with the consent of the lender or in accordance with applicable state law? (12 USC §4903(b)(1))		
b. An address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel the PMI? (12 USC §4903(b)(2)) *Note: This disclosure may be included on RESPA's annual escrow account disclosure or IRS interest payment disclosure.*		
7. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices within 30 days after the date of cancellation or termination of PMI that the borrower no longer has PMI and that no further PMI payments or related fees are due? (12 USC §4904(a))		
8. If the financial institution services residential mortgage transactions, does it return all unearned PMI premiums to the borrower within 45 days of either termination upon the borrower's request or automatic termination under the HOPA? (12 USC §4902(f))		
9. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices of the grounds it relied on (including the results of any appraisal) to deny a borrower's request for PMI cancellation, no later than 30 days after the date the request is received, or the date on which the borrower satisfies any evidence and certification requirements established by the lender, whichever is later? (12 USC §4904(b)(1) and 12 USC §4904(b)(2)(A))		

	Yes	No
10. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices of the grounds it relied on (including the results of any appraisal) for refusing to automatically terminate PMI not later than 30 days after the scheduled termination date? (12 USC §4904(b)(2)(B)) *Note: The scheduled termination date is reached when, based on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan), the principal balance of the loan is first scheduled to reach 78 percent of the original value of the mortgaged property, if the borrower is current on that date or the first day of the first month after the date that the borrower becomes current.*		
11. If the financial institution acts as a servicer for adjustable rate residential mortgage transactions, does the financial institution notify borrowers that the cancellation date has been reached? (12 USC §4903(a)(1)(B)(i))		
12. If the financial institution acts as a servicer for adjustable rate residential mortgage transactions, does the financial institution notify the borrowers on the termination date that PMI has been canceled or that it will be cancelled on the first day of the first month after the date that the loan becomes current? (12 USC §4903(a)(1)(B)(ii))		
13. If the financial institution requires "Lender Paid Mortgage Insurance" (LPMI) for residential mortgage transactions, does it provide a written notice to a prospective borrower on or before the loan commitment date that includes:		
a. A statement that LPMI differs from borrower paid mortgage insurance (BPMI) in that the borrower may not cancel LPMI, while BPMI is subject to cancellation and automatic termination under the HOPA? (12 USC §4905(c)(1)(A))		
b. A statement that LPMI usually results in a mortgage with a higher interest rate than BPMI? (12 USC §4905(c)(1)(B)(i))		
c. A statement that LPMI only terminates when the transaction is refinanced, paid off, or otherwise terminated? (12 USC §4905(c)(1)(B)(ii))		
d. A statement that LPMI and BPMI both have benefits and disadvantages and a generic analysis reflecting the differing costs and benefits of each over a 10-year period, assuming prevailing interest and property appreciation rates? (12 USC §4905(c)(1)(C))		
e. A statement that LPMI may be tax-deductible for federal income taxes if the borrower itemizes expenses for that purpose? (12 USC §4905(c)(1)(D))		
14. If the lender requires LPMI for residential mortgage transactions, and the financial institution acts as servicer, does it notify the borrower in writing within 30 days of the termination date that would have applied if it were a BPMI transaction, that the borrower may wish to review financing options that could eliminate the requirement for PMI? (12 USC §4905(c)(2))		
15. Does the financial institution prohibit borrower paid fees for the disclosures and notifications required under the HOPA? (12 USC §4906)		

Flood Disaster Protection[1]

Introduction

The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA).[2] The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. The NFIP is administered by a department of the Federal Emergency Management Agency (FEMA) known as the Federal Insurance Administration (FIA). The FDPA requires federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in a SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994[3] which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised the Federal flood insurance statutes. The purpose of the Reform Act is to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[4] The Reform Act required the federal financial regulatory agencies[5] to revise their current flood insurance regulations and brought the Farm Credit Administration (FCA) under coverage of the Act. These agencies issued a joint final rule (final rule) on August 29, 1996, (61 FR 45684).

The Reform Act also applied flood insurance requirements directly to the loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration, Federal Housing Administration and the Veteran's Administration.

Objectives of the FDPA:

- Provide flood insurance to owners of improved real estate located in SFHAs of communities participating in the NFIP.
- Require communities to enact measures designed to reduce or avoid future flood losses as a condition for making federally subsidized flood insurance available.
- Require federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in an SFHA of a community participating in the NFIP, unless the property securing the loan is covered by flood insurance.
- Require federal agencies, such as the Federal Housing Administration (FHA), Small Business Administration (SBA) and the Department of Veterans's Affairs (VA) not to subsidize, insure, or guarantee any loan if the property securing the loan is in an SFHA of a community not participating in the NFIP.

Responsibilities of FIA:

- Identifying communities with SFHAs.
- Issuing flood boundary and flood rate maps for flood-prone areas.
- Making flood insurance available through the NFIP "Write Your Own" Program (WYO) which enables the public to purchase NFIP coverage from private companies that have entered into agreements with FIA.
- Assisting communities in adopting flood plain management requirements.
- Administering the insurance program. Licensed property and casualty insurance agents and brokers provide the primary connection between the NFIP and the insured party. Licensed agents sell flood insurance, complete the insured party's application form, report claims and follow-up with the insured for renewals of the policies.

National Flood Insurance Program:

The NFIP has two distinct phases, the Emergency Program and the Regular Program.

- The Emergency Program is for communities that first enter the NFIP. It is an interim program that provides lower levels of flood insurance on eligible structures at subsidized rates. FEMA issues flood hazard boundary maps with this program to determine whether properties are located in a flood plain area. A community that is in the Emergency Program will be admitted to the Regular Program upon completion of specific requirements.

---

1 This section fully incorporates the examination procedures issued under DCA RD Memo 96-060: Revised Examination Procedures for Loans in Areas Having Special Flood Hazards.

2 These statutes are codified at 42 USC §4001-4129. FEMA administrator the NFIP; its regulations implementing the NFIP appear at 44 CFR Parts 59-77.

3 Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

4 H.R. Conf. Rep. No. 652, 103d Cong. 2d Sess. 195 (1994). (Conference Report).

5 The agencies are the OCC, FDIC, OTS, NCUA and Federal Reserve.

- A community enters the Regular Program once a detailed study has been completed and a flood insurance rate map for the area has been issued by FEMA. The maps delineate communities by degrees of probable flood hazard and include more specific area identification than do the flood hazard boundary maps. They also indicate base flood elevations depicting depth or elevation of flooding. The Regular Program provides full insurance coverage for eligible structures and it requires additional flood-plain management responsibilities for the community.

Eligible Structures for Flood Insurance

The NFIP covers improved real property or mobile homes located or to be located in an area identified by FEMA as having special flood hazards. Generally each insurable structure requires a separate insurance policy, although FEMA does provide special consideration for some nonresidential buildings. The following types of structures are eligible for coverage:

- Residential, industrial, commercial, and agricultural buildings that are walled and roofed structures that are principally above ground.
- Buildings under construction where a development loan is made to construct insurable improvements on the land. Insurance can be purchased to keep pace with the new construction.
- Mobile homes that are affixed to a permanent site, including mobile homes that are part of a dealer's inventory and affixed to permanent foundations.
- Condominiums.
- Co-operative buildings.
- Flood insurance coverage is also available for personal property and other insurable contents contained in real property or mobile homes located in SFHAs. The property must be insured in order for the contents to be eligible.

Structures not eligible for flood insurance under the NFIP

- Unimproved land, bridges, dams and roads.
- Mobile homes not affixed to a permanent site.
- Travel trailers and campers.
- Converted buses or vans.
- Buildings entirely in, on, or over water into which boats are floated.
- Buildings newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier with the Coastal Barrier Resource System established by the Coastal Barrier Resources Act (Public Law 97-348).

Flood Insurance Requirements for Lending Institutions

Basic Requirement

Flood insurance is required for the term of the loan on buildings or mobile homes when all three of the following factors are present:

- The institution makes, increases, extends, or renews any loan(s) (commercial or consumer) secured by improved real estate or a mobile home that is affixed to a permanent foundation ("security property");
- The property securing the loan is located or will be located in an SFHA as identified by FEMA; and
- The community participates in the NFIP.

In the case of mobile homes, the criteria for coverage turns on whether the mobile home is affixed to a permanent foundation. An institution does not have to obtain a security interest in the underlying real estate in order for the loan to be covered by the final rule.

Institutions are not prohibited from making, increasing, extending, or renewing a conventional loan if the community in which the security property is located has been mapped by FEMA but does not participate in the NFIP. However, federal flood insurance is not available in these communities. In addition, it should be noted that government guaranteed or insured loans (secured or unsecured) cannot be made if the community has been mapped by FEMA and does not participate in the NFIP.

Flood insurance requirements apply to loans where a security interest in improved real property is only taken "out of an abundance of caution." §102(b)(1) of the FDPA, as amended by the Reform Act,[6] provides that a regulated lending institution may not make, increase, extend, or renew *any loan secured by improved real property* that is located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute.

Special Situation—Table Funded Loans

In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer.

[6] *See* 42 USC §4012a(b)(1)

While the transaction is, in substance, a loan made by the funding party, it is structured as the purchase of a loan.

The final rule reflects that, for flood hazard determination purposes, the substance of the table funded transaction should control and that the typical table funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds. Regulated institutions that provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be "making" a loan for purposes of the flood insurance requirements.

Treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices. The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer, as is currently done with respect to the requirements under the Real Estate Settlement Procedures Act (RESPA).

Exemptions to the Purchase Requirement

The flood insurance purchase requirement does not apply to the following two loan situations:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Director of FEMA. The Director will periodically publish a list of state property falling within this exemption.
- Loans with an original principal balance of $5,000 or less, and having an original repayment term of one year or less.

Amount of Flood Insurance Required

The amount of flood insurance required must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less. Flood insurance coverage does not include the value of the land; rather, it only covers the amount of the insurable structure(s). Institutions may deduct the appraised value of the land from the total amount of the secured property to determine an estimated amount for insurance coverage. The amount of insurance coverage may not be less than the value of the improved structure(s).

Since March 1, 1995, the limits of coverage for flood policies are:

- $250,000 for residential property structures and $100,000 for personal contents
- $500,000 for non-residential structures and $500,000 for contents.

Waiting Period

Effective March 1, 1995, the Reform Act increased the waiting period for flood insurance coverage from five days to thirty days. FEMA through Policy Issuance 8-95, dated December 5, 1995, stated that increases in coverage amounts would be subject to the increased waiting period except in the following circumstances:

- When there is an existing policy and an additional amount of insurance is required in connection with the making, increasing, extension, or renewal of a loan, such as a second mortgage, home equity, or refinancing,
- When an additional amount of insurance is required as a result of a map revision,
- When an additional amount of insurance is being obtained in connection with the renewal of an existing policy, or
- When flood insurance is required as a result of a lender determining that a loan which does not have flood insurance coverage should be protected by insurance (forced placement).

Special Situations—Second Mortgages/Home Equity Loans

Both second mortgages and home equity loans are transactions that come within the purchase provisions of the FDPA. Since only one flood insurance policy can be issued for a building, an institution should not request a new flood insurance policy if one already exists. Instead, the institution should have the borrower contact the insurance agent:

- To inform the agent of the intention to obtain a loan involving a subordinate lien
- To obtain verification of the existence of a flood insurance policy, and
- To check whether the amount of insurance covers all loan amounts.

After obtaining this information, the insurance agent should increase the amount of coverage if necessary and issue an endorsement that will reflect the institution as a lien holder.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan since the borrower will be drawing down differing amounts on the line at different times. In those instances where there is no policy on the collateral the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. As a matter of administrative convenience to ensure compliance with the requirements, an institution may take the following alternative approaches:

- Review its records periodically so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or
- Upon origination, require the purchase of flood insurance for the total amount of the loan or the maximum amount of flood insurance coverage available, whichever is less.

Special Situations—Condominium Policies

Effective October 1, 1994, FEMA issued a new condominium master policy called a Residential Condominium Building Association Policy (RCBAP). If the amount of the policy is 80% or more of the replacement value of the building, no co-insurance deductible is required by the policy. An institution can rely on a RCBAP as the required amount of flood insurance to support the loan if the policy meets the 80% requirement.

The amount of possible coverage available to a condominium association is $250,000 per unit multiplied by the total number of units. For instance, the maximum amount of coverage on a 50 unit condominium building would be $12,500,000 ($250,000 x 50). If the replacement value of the building was $10,000,000, the condominium association could purchase a policy of $8,000,000 (or more) and not be required to have a coinsurance payment in the event of a flood. This amount of insurance would meet the requirements of the final rule for any individual unit insurance requirement in the condominium.

Other Special Situations

- *Multiple Structures*—Multiple structures that secure a loan located in an SFHA generally must each be covered by flood insurance, even though the value of one structure may be sufficient to cover the loan amount. FEMA does permit borrowers to insure nonresidential buildings using one policy with a schedule separately listing each building. Loans secured by agricultural properties and improvements may be particularly assisted through this practice.
- *Other Real Estate Owned*—An institution with other real estate owned (OREO) in flood hazard areas should, as a prudent practice, purchase flood insurance policies on its OREO property, although it is not required to do so by the regulation.

Escrow Requirements

An institution must require the escrow of flood insurance premiums for loans secured by "residential improved real estate" if it requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for hazard or fire insurance, or any other fees. Depending on the type of loan, the escrow account for flood insurance premiums may be subject to section 10 of RESPA, 12 U.S.C. 2609,6 which generally limits the amount that may be maintained in escrow accounts for consumer mortgage loans, and requires notices containing escrow account statements for those accounts. RESPA escrow requirements apply to "federally related mortgage loans", a category of loans that is narrower in scope than the Reform Act's "residential improved real estate." Therefore, escrow accounts established for federally related mortgage loans must complywith the requirements of section 10 of RESPA. However, an escrow account for "residential improved real estate" that is not also a "federally related mortgage loan" need not comply with section 10 of RESPA, even though the escrow requirements of the Reform Act apply.

The escrow provisions are designed to improve compliance with flood insurance requirements by ensuring that homeowners located in special flood hazard areas obtain and maintain flood insurance for the life of the loan. However, the Reform Act itself does not restrict the flood insurance escrow requirement to consumer mortgage loans. The determinative factor in the coverage of the escrow requirement is not the purpose of the loan, but the purpose of the building—whether it is used primarily for residential purposes or for other purposes. Because the Reform Act defines "residential improved real estate" as "improved real estate for which the improvement is a residential building", the escrow provisions cover, for example, multi-family properties containing five or more residential units if the lender requires the escrowing of funds for insurance, taxes or other fees.

Special situation involving condominium units

In the case of a condominium unit where the association has purchased an RCBAP that meets the 80% requirement of FEMA, the payments made by the borrower to the condominium association for the policy will constitute compliance with the requirements of the final rule for the escrow provisions.

Types of escrow accounts covered

The escrow requirement does not apply if the institution does not require other escrows to be maintained. An escrow arrangement is generally considered voluntary if the policies of the institution do not require the establishment of an escrow account in connection with the particular type of loan, even if permitted by the loan documents. In determining whether an escrow account arrangement is voluntary, it is appropriate to look to the loan policies and practices of the institution and the contractual agreement underlying the loan. If the loan documentation permits the institution to require an escrow account, and its loan policies normally would require

an escrow account for a loan with particular characteristics, an escrow account in connection with such a loan generally would not be considered to be voluntary.

In the preamble to their final rule, the agencies noted that HUD takes the position that voluntary payments for credit life insurance do not constitute escrows for purposes of RESPA.[7] Therefore, the agencies have also determined that payments for credit life insurance and similar types of contracts should not trigger the escrow of flood insurance premiums.

Standard Flood Hazard Determination Form

When an institution makes, increases, extends, or renews any loan secured by improved real estate or by a mobile home, it *must* use the standard flood hazard determination form (SFHDF) developed by FEMA[8] to determine whether the building or mobile home offered as security property is or will be located in an SFHA in which flood insurance is available under the Act.

An institution can use a printed, computerized or electronic form. It must retain a copy of the completed form, in either hard copy or electronic format, for the period of time it owns the loan. FEMA has stated that if an electronic format is used, the format and exact layout of the SFHDF is not required, but the fields and elements listed on the form are required. Any electronic format used by an institution must contain all mandatory fields indicated on the SFHDF.

Decisions as to the applicability of flood insurance may not be based on an institution's unilateral determination of elevations at which floods may occur. Official elevation determinations and, therefore, map revisions or amendments (LOMAs or LOMRs) may only be performed by FEMA.

Flood maps, Standard Flood Hazard Determination forms, and Community Status Books may be obtained from FEMA by writing to:

Federal Emergency Management Agency
Map Services Center
P.O. Box 1038
Jessup, MD 20794-1038

or calling: **1-800-358-9616 or 1-800-611-6125**

or ordering online: **www.msc.fema.gov**

Community status information is no longer published in the Federal Register. To obtain information on a community's participation status, telephone a FEMA representative at 1- 800-358-9616 to request a community status book. Information on community status is also available on the Interenet at http://www.fema.gov/fema/finifp.html.

Reliance on prior determination

The Reform Act permits an institution to rely on a prior determination, whether or not the security property is located in an SFHA, and it is exempt from liability for errors in the previous determination if:

- The previous determination is not more than seven years old, and
- The basis for it was recorded on the SFHDF mandated by the Reform Act.

There are, however, two circumstances in which an institution may not rely on a previous determination:

- If FEMA's map revisions or updates show that the security property is now located in an SFHA, or
- If the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

The Reform Act also states that an institution cannot rely on a previous determination set forth on an SFHDF when it makes a loan, only when it increases, extends, renews or purchases a loan. However, the preamble to the final rule indicates that the agencies will treat subsequent transactions by the same institution with respect to the same property, such as assumptions, refinancings and second lien loans, as renewals. A new determination would, therefore, not be required in those limited circumstances, assuming the other requirements are met.

Forced Placement Requirements

The Reform Act does not require an institution to monitor for map changes, and the final rule does not require that determinations be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan the institution or its servicer determines that required flood insurance is deficient, the final rule requires initiation of forced placement procedures.

The Reform Act imposed the requirement on an institution or a servicer acting on its behalf to purchase or "force place" flood insurance for the borrower if the institution or the servicer determines that coverage is lacking. The final rule, therefore, provides that an institution, or servicer acting on its behalf, upon discovering that security property is not covered by an

[7] *See* 60 FR 24733 (May 9, 1995) (revising 24 CFR §3500.17)

[8] *See* 60 FR 35276 (July 6, 1995)(codified at 44 CFR §65.16 and part 65, App A).

adequate amount of flood insurance, must, *after providing notice and an opportunity for the borrower to obtain the necessary amount of flood insurance*, purchase flood insurance in the appropriate amount on the borrower's behalf.

An institution or its servicer continues to be responsible for ensuring that where flood insurance was required at origination, the borrower renews the flood insurance policy and continues to renew it for as long as flood insurance is required for the security property. If a borrower allows a policy to lapse when insurance is required, the institution or its servicer is required to commence force placement procedures.[9]

Forced placement should not be necessary at the time an institution makes, increases, extends, or renews a loan, when it is obligated to require that flood insurance be in place prior to closing. Rather, forced placement authority is designed to be used if, over the term of the loan, the institution or its servicer determines that flood insurance coverage on the security property is deficient; that is, whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum stipulated by statute for the particular category of structure securing the loan. The amount that must be force placed is equal to the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit.

There is no required specific form of notice to borrowers for use in connection with the forced placement procedures. An institution or its servicer may choose to send the notice directly or may use the insurance company that issues the forced placement policy to send the notice. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. For information concerning the contents of the notification letters used under the MPPP, lenders and others should consult FEMA's MPPP Notice.[10]

Determination Fees

An institution or its servicer may charge a reasonable fee to the borrower for the costs of making a flood hazard determination under the following circumstances:

- The borrower initiates a transaction (making, increasing, extending, or renewing a loan) that triggers a flood hazard determination;
- There is a revision or updating of floodplain areas or risk zones by FEMA;
- The determination is due to FEMA's publication of a notice that affects the area in which the loan is located; or
- The determination results in the purchase of flood insurance under the forced placement provision.

The preamble to the final rule indicates that the authority to charge a borrower a reasonable fee for a flood hazard determination extends to a fee for life-of-loan monitoring by either the institution, its servicer, or by a third party, such as a flood hazard determination company.

Truth in Lending Act Issues

The Official Staff Commentary to Regulation Z states that a fee for services that will be performed periodically during the loan term is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. This would include the fee for life-of-loan coverage. The fee for the determinations of whether a security property is in a SFHA is excluded from the finance charge. The Commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge.[11] If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Notice Requirements

The final rule requires that when the security property is or will be located in a SFHA, the institution must provide a written notice to the borrower and the servicer. This notice must be provided regardless of whether the security property is located in a participating or non-participating community. The written notice must contain the following information:

- A warning that the building or mobile home is or will be located in a SFHA.
- A description of the flood purchase requirements contained in §102(b) of the FDPA, as amended.
- A statement whether flood insurance coverage is available under the NFIP and may also be available from private insurers.
- A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a Federally declared disaster.

The final rule permits an institution to use the sample form contained in appendix A to comply with the notice requirements. The sample form is an example of an acceptable form that notice may take and it does contain additional information not required under the regulation. Lenders may also personalize, change the format of, and add information

[9] The insurance carrier should notify the institution or its servicer, along with the borrower, when the insurance contract is due for renewal. The insurance carrier also notifies these parties if it has not received the policy renewal.

[10] Notice by FEMA, 60 FR 44881 (August 29, 1995).

[11] *See* 12 CFR part 226, supplement 1, comment 4(c)(7)-3.

to the sample form if they wish to do so. However, to ensure compliance with the notice requirements, a lender-revised notice form must provide the borrower, at a minimum, with the information required by the regulation.

The final rule permits an alternate notice provision by which an institution may rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee. This alternate form of notice might arise in a situation where the lender is providing financing through a developer for the purchase of condominium units by multiple borrowers. The lender may not deal directly with the individual condominium unit purchaser and need not provide notice to each purchaser but may instead rely on the developer/seller's assurances that the developer/seller has given the required notice. The same is true for a cooperative conversion, where the sponsor of the conversion may be providing the required notice to the purchasers of the cooperative shares. A purchase of shares in a cooperative may be considered to be a "lessee" rather than a purchase with respect to the underlying real property.

The final rule provides that delivery of notice must take place within a "reasonable time" before the completion of the transaction. What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. An institution should bear in mind, however, that a borrower should receive notice timely enough to ensure that:

- The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and
- Where applicable, the borrower can purchase flood insurance before completion of the loan transaction.

The preamble to the final rule states that the agencies generally continue to regard ten days as a "reasonable" time interval.

Notice to Servicer

The Reform Act added loan servicers to the entities that must be notified of special flood hazards. In many cases the servicer's identity will not be known until well after the closing; consequently, notification to the servicer in advance of the closing would not be possible or would serve no purpose. In recognition that the servicer is often not identified prior to closing, the preamble to the final rule requires notice to the servicer as promptly as practicable after the institution provides notice to the borrower, and provides that notice to the servicer must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes. The final rule explicitly states that delivery of a copy of the borrower's notice to the servicer suffices as notice to the servicer.

Notice to Director of FEMA

An institution must notify the Director of FEMA, or the Director's designee, of the identity of the loan servicer and of any change in the servicer. FEMA has designated the insurance carrier as its designee to receive notice of the servicer's identity and of any change therein, and at FEMA's request this designation is stated in the final regulation. Notice of the identity of the servicer will enable FEMA's designee to provide notice to the servicer of a loan 45 days before the expiration of a flood insurance contract. The final rule requires the notice to be sent within 60 days of the effective date of the transfer of servicing. No standard form of notice is required to be used; however, in the preamble to the final rule, the agencies stated that the information should be sufficient for the Director, or the Director's designee, to identify the security property and the loan, as well as the new servicer and its address.

Recordkeeping Requirements

The record keeping requirements of the final rule include retention of:

- Copies of completed SFHD forms, in either hard copy or electronic form, for as long as the institution owns the loan; and
- Records of the receipt of the notice to the borrower and the servicer for as long as the institution owns the loan.

The final rule does not prescribe a particular form for the record of receipt, however, it should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt may include:

- A borrower's signed acknowledgment on a copy of the notice,
- A borrower-initialed list of documents and disclosures that the lender provided the borrower, or
- A scanned electronic image of a receipt or other document signed by the borrower.

An institution may keep the record of receipt provided by the borrower and the servicer in the form that best suits the institution's business. Institutions who retain these records electronically must be able to retrieve them within a reasonable time.

Penalties and Liabilities

The Reform Act revised the FDPA to provide penalties for violations of:

- Escrow requirements;
- Notice requirements; and
- Forced placement requirements.

If an institution is found to have a pattern or practice of committing violations, the agencies shall assess civil penalties in an amount not to exceed $385 per violation with a total amount against any one regulated institution not to exceed $125,000 in any calendar year. Any penalty assessed will be paid into the National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent purchaser of a loan. Liability for penalties expires four years from the time of the occurrence of the violation.

Federal Emergency Management Agency (FEMA)

FEMA administers the National Flood Insurance Program through the Federal Insurance Administration located at:

Federal Emergency Management Agency
Federal Insurance Administration
500 C Street, S.W.
Washington, DC 20472
1-800-621-FEMA (1-800-621-3362)

A list of regional contacts is located at:

http://www.fema.gov/about/contact/regions.shtm

Examination Objectives

1. To determine whether an institution performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the final rule.
2. To determine if the institution requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located or to be located in a SFHA.
3. To determine if the institution provides the required notices to the borrower, servicer and to the Director of FEMA whenever flood insurance is required as a condition of the loan.
4. To determine if the institution requires flood insurance premiums to be escrowed when flood insurance is required on a residential building and other items are required to be escrowed.
5. To determine if the institution complies with the forced placement provisions if at any time during the term of a loan it determines that flood insurance on the loan is not sufficient to meet the requirements of the regulation.
6. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

Examination Procedures

The following procedures should be performed, as appropriate:

- By reviewing previous examinations and supervisory correspondence;
- By obtaining and reviewing the institution's policies, procedures and other pertinent information;
- By reviewing the institution's system of internal controls;
- Through discussions with management; and
- By reviewing a sample of loan files.

Coverage and Internal Control

1. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in a special flood hazard area.
2. Verify that the process used accurately identifies special flood hazard areas.
3. For those special flood hazard areas identified, determine if the communities in which they are located participate in the National Flood Insurance Program (NFIP).
4. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
5. If the institution purchases servicing rights, review the contractual obligations placed on the institution as servicer by the owner of the loans to ascertain if flood insurance requirements are identified and compliance responsibilities are adequately addressed.
6. If the institution utilizes a third party to service loans, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately addressed.

Property Determination Requirements

1. Verify that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF).
2. Verify that the institution only relies on a previous determination if it is not more than seven years old, is recorded on the SFHDF and that it is not in a community that has been remapped.
3. If the institution utilizes a third party to prepare flood zone determinations, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately covered, including the extent of the third party's guarantee of work and the procedures in place to resolve disputes relating to determinations.
4. Verify that the institution retains a copy of the completed SFHDF, in either hard copy or electronic form, for as long as it owns the loan.

Purchase Requirements

1. For loans that require flood insurance, determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan.
2. If the institution makes loans insured or guaranteed by a government agency (SBA, VA or FHA) determine how it complies with the requirement not to make these loans if the security property is in a SFHA within a non-participating community.

Determination Fee Requirements

1. Determine that any fees charged to the borrower by the institution for flood zone determinations (absent some other authority such as contract language) are charged only when a loan:
   - Is made, increased, renewed or extended;
   - Is made in response to a remapping by FEMA; or
   - Results in the purchase of flood insurance under the forced placement provisions.
2. If other authority permits the institution to charge fees for determinations in situations other than the ones listed above, determine if the institution is consistent in this practice.
3. Determine the reasonableness of any fees charged to a borrower for flood determinations by evaluating the method used by the institution to determine the amount of the charge. Consider, for example, the relationship of the fees charged to the cost of services provided.

Notice Requirements

1. Ascertain that written notice is mailed or delivered to the borrower within a reasonable time prior to loan closing.
2. Verify that the notice contains:
   - A warning that the property securing the loan is or will be located in a SFHA;
   - A description of the flood insurance purchase requirements;
   - A statement , where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers, if applicable; and
   - A statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a Federally declared disaster, if applicable.
3. If the seller or lessor provided the notice to the purchaser or lessee, verify that the institution obtained satisfactory written assurance that the notice was provided within a reasonable time before the completion of the sale or lease transaction.
4. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
5. If applicable, verify that the institution provided written notice to the servicer of the loan within the prescribed time frames and that the institution retains a record of receipt of the notice for as long as it owns the loan.
6. If the institution transfers servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (Director of FEMA's designee) within prescribed time frames.

Escrow Requirements

1. If the institution's policies or loan documents require the escrow of funds to cover charges such as taxes, premiums for hazard insurance or other fees, verify that the institution requires the escrow of funds for loans secured by residential improved real estate to cover premiums and other charges associated with flood insurance.
2. For loans closed after October 1, 1996, where flood insurance is required and where the loan is subject to RESPA, verify that the institution's escrow procedures comply with Section 10 of RESPA.

Forced Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that is has appropriate policies and procedures in place to exercise its forced placement authority.
2. If the institution is required to force place insurance, verify:
   - That it provides written notice to the borrower that flood insurance is required, and
   - That if the required insurance is not purchased by the borrower within 45 days from the time that the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf.

FDPA Examination Checklist

The following questions are designed to be used in conjunction with the Examination Procedures to guide the examiner in a comprehensive review of the requirements of the regulation as it is applied to depository institutions.

Coverage

1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in the regulation? If yes, complete the remainder of this checklist.
2. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, does it have

procedures to ensure that the requirements of the regulation are followed?

3. If the institution purchases servicing rights to loans covered by the regulation, do the documents between the parties specify the contractual obligations on the institution with respect to flood insurance compliance?
4. If the institution utilizes third parties to service loans covered by the regulation, do the contractual documents between the parties meet the requirements of the regulation?

Property Determination

1. If the institution utilizes a third-party to prepare flood zone determinations, do the contractual documents between the parties:
   - Provide for the third-party's guarantee of work?
   - Contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance, and to address which party will be responsible for penalties incurred for noncompliance?
2. Are the determinations prepared on the Standard Flood Hazard Determination Form developed and authorized by FEMA?
   - If the form is maintained in an electronic format does it contain the elements required by FEMA?
3. Does the institution maintain a record of the Form either in hard copy or electronic form for as long as it owns the loan?
4. Does the institution rely on a prior determination only if it is made on the SFHDF, is no more than seven years old and the community has not been remapped?

Determination Fees

1. Absent some other authority (such as contract language) does the institution charge a fee to the borrower for a flood determination only when:
   - It is made when a loan is made, increased, renewed or extended, or
   - It is made in response to a remapping by FEMA, or
   - It results in the purchase of flood insurance under the forced placement provisions?
2. If the institution has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently?
3. If the institution requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower:
   - Does it either break out the original determination charge from the charge for life-of-loan monitoring or include the full amount of the charge as a finance charge for those loans subject to TILA?
4. Are the fees charged by the institution for making a flood determination reasonable?

Notice Requirements

1. Are borrowers whose security property is located in a Special Flood Hazard Area (SFHA) provided written notice within a reasonable time prior to loan closing?
2. Does the notice contain the following required information?
   - A warning that the building or mobile home is located in a SFHA;
   - A description of the flood insurance requirements;
   - A statement that flood insurance is available under the NFIP and is also available from private insurers; and
   - A statement whether federal disaster relief assistance may be available in the event of damage to a building or mobile home caused by flooding in a Federally-declared disaster.
3. If the institution uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor?
4. Does the institution provide a copy of the borrower notification to the servicer of the loan within the required time frames?
5. Does the institution retain a record of receipt of the notifications provided to the borrower and the servicer for as long as it owns the loan?

Insurance Requirements

1. If an improved property or mobile home is located in a SFHA and flood insurance is required, does the institution have the borrower obtain a policy, with the institution as loss payee, in the correct amount prior to closing?
2. Where multiple properties securing the loan are located in SFHAs, does the institution have sufficient insurance either through a single policy with a scheduled list of several buildings or multiple policies, to meet the minimum requirements of the regulation? (*See* narrative for description of minimum requirements)

Escrow Requirements

1. Does the institution have policies requiring escrows for property taxes, hazard insurance or other fees on residential buildings?
   - If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
2. If the institution has no specific policies regarding escrows, does its loan documents permit the institution to escrow for the above items?

- If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?

3. On loans closed on or after October 1, 1996, that are subject to RESPA and, where flood insurance is required, does the institution comply with the provisions of §10 of RESPA (§3500.17 of Regulation X) for those escrows?

Forced Placement Requirements

1. If at any time during the life of the loan, the institution determines that property securing a designated loan lacks adequate flood insurance coverage:
   - Does the institution provide written notice to the borrower stating that the necessary coverage must be obtained within 45 days of the notice or the institution will purchase it on the borrower's behalf?
   - Does the institution purchase the coverage on the borrower's behalf if the borrower does not obtain the required policy within the required time period?

Notice to Director of FEMA

1. Does the institution provide the appropriate notice to the carrier of the insurance policy (the Director of FEMA's designee) regarding the identity of the servicer of a designated loan?
2. If the institution sells or transfers the servicing of designated loans to another party, does it have procedures in place to provide the appropriate notice to the Director's designee within 60 days of the effective date of the transfer of the servicing?

FDPA Model Worksheet

This worksheet is offered as a potential tool for a compliance auditing program when conducting a review of loans that may be subject to flood insurance requirements.

To use the worksheet:

- Select a sample of commercial and consumer loans secured by improved real estate or a mobile home.

  NOTE: Loans not requiring the purchase of flood insurance include those:

  — *Secured by state-owned property subject to an acceptable self insurance policy; or*

  — *With original amounts less than $5,000 and an original term of less than 1 year.*

- Answer the questions as appropriate.

The worksheet is designed as a decision tree that will guide the user through the requirements of the Act.

Name of Borrower:										
Loan #										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. If the loan was made, increased, extended, or renewed before 1/2/96, go to step 2. If the loan was made, increased, extended, or renewed after 1/2/96, did the bank use the Standard Flood Hazard Determination Form to determine if the improved property or mobile home securing the loan is located or will be located in an SFHA? If YES, go to step 1a. If NO, cite violation of §339.6(a). Go to step 2. 1a. Did the bank retain a copy of the completed Standard Flood Hazard Determination Form for this loan? If YES, go to step 2. If NO, cite violation of §339.6(b). Go to step 2.										
2. Is the improved property or mobile home located in an SFHA? If YES, go to step 2a. If NO, go to step 11. 2a. Is the improved property or mobile home located or to be located in a participating community? If YES, go to step 3. If NO, go to step 2b.										

Name of Borrower:										
Loan #										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2b. Is the loan insured or guaranteed by a government agency (e.g., SBA, FHA, VA, etc.)? If YES, document the loan for referral to the government agency. If NO, go to step 3. 3. Prior to closing, did the bank give the borrower proper notice that the improved property or mobile home securing the loan is located or will be located in an SFHA? If YES, go to step 3a. If NO, cite a violation of §339.9(a). Go to step 3a. 3a. Prior to closing, did the bank notify the borrower about the availability of federal disaster relief assistance? If YES, go to step 3b. If NO, cite a violation of §339.9(b)(4). Go to step 3b. 3b. Did the bank retain a record of the borrower's and servicer's acknowledgment of the notice? If YES, go to step 4. If NO, cite a violation of §339.9(d). Go to step 4.										
4. If the security property is in a participating community is it insured for flood hazard? If YES, go to step 7. If NO, go to step 5.										
5. Did the insurance lapse? If YES, cite a violation of §339.3. Go to step 6. If NO, go to step 10.										
6. Did the bank notify the borrower to purchase the insurance within 45 calendar days? If YES, go to step 6a. If NO, cite violation of §339.7. Go to step 6a.										

Name of Borrower:										
Loan #										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6a. Has the loan been uninsured longer than 45 calendar days after the bank notified the borrower? If YES, cite a violation of §339.3. Go to step 8. If NO, go to step 8.										
7. Is the loan covered by an adequate amount of insurance? If YES, go to step 8. If NO, cite violation of §339.3. Go to step 8.										
8. Did the loan close on or after 10/1/96? If YES, go to step 8a. If NO, go to step 10. 8a. Does the property meet the definition of residential improved real estate per §339.2 (i)? If YES, go to step 8b. If NO, go to step 9. 8b. Did the bank require the borrower to escrow taxes, insurance premiums, fees or any other charges? If YES go to step 8c. If NO, go to step 9. 8c. Did the bank require flood insurance premiums to be escrowed? If YES, go to step 8d. If NO, cite violation of §339.5. Go to step 9. 8d. On designated loans also covered by RESPA, does bank follow provisions of section 10 of RESPA? If YES, go to step 9. If NO, cite violation of HUD's Reg. X, §3500.17. Go to step 9.										

Name of Borrower:										
Loan #										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9. When the bank made, increased, extended, renewed, sold or transferred the loan, did the bank notify the insurance carrier in writing of the loan servicer's identity? If YES, go to step 9a. If NO, cite violation of §339.10(a). Go to step 10. 9a. Was the notification within 60 days after the effective date of the change? If YES, go to step 10. If NO, cite violation of §339.10(b). Go to step 10.										
10. Are the fees charged to the borrower for flood determinations (may include life of loan monitoring service) reasonable? If YES, go to step 11. If NO, cite violation of §339.8(a). Go to step 11.										
11. Summarize your findings.										

References

Flood Disaster Protection Act of 1973, as amended
http://www.fdic.gov/regulations/laws/rules/6500-3600.html#6500fdpa1973

12 CFR Part 339: Loans in Areas Having Special Flood Hazards
http://www.fdic.gov/regulations/laws/rules/2000-6100.html#2000part339

FIL 81-2001: Strengthening Compliance with Federal Flood Insurance Requirements
www.fdic.gov/news/news/financial/2001/FIL0181.html

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies
www.fdic.gov/regulations/laws/rules/5000-1600.html#5000interagencypr

Advisory Opinion 96-10: Loans Made by Insured Depository Institutions for Properties Located in Communities Not Participating In the National Flood Insurance Program
www.fdic.gov/regulations/laws/rules/
4000-1200.html#400096-10

FIL 77-97: Interagency Questions and Answers on Flood Insurance
www.fdic.gov/news/news/financial/1997/fil9777a.html

DCA RD Memo 96-060: Revised Examination Procedures for Loans In Areas Having Special Flood Hazards (Part 339)
http://fdic01/division/dsc/memos/memos/direct/6486-2.pdf

DSC RD Memo 05-029: Revised Guidance About Civil Money Penalties for Flood Insurance Violations
http://fdic01/division/dsc/memos/memos/6000/05-029.pdf

DSC RD Memo 06-016: Updated Standard Flood Hazard Determination Form
http://fdic01/division/dsc/memos/memos/6000/06-016.pdf

Flood Zone Determination Program
http://fdic01/division/dca/automation/flood/FloodTips1.html

Equal Credit Opportunity Act (ECOA)

Introduction

The examination procedures in this section are primarily for the technical compliance review. Although the fair lending procedures are addressed under a separate section of the Handbook, findings from the technical review may aid the review for fair lending. These procedures should be conducted to ensure compliance with all sections of the subject regulation.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on

- Race or color,
- Religion,
- National origin,
- Sex,
- Marital status,
- Age (provided the applicant has the capacity to contract),
- The applicant's receipt of income derived from any public assistance program, or
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

The Federal Reserve Board's Regulation B, found at 12 CFR Part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official staff interpretations of the regulation are found in Supplement I to 12 CFR Part 202.

Examination Procedures

- Examiners must review compliance with these provisions in all compliance examinations that include review of bank loan files, and they may elect to do so as part of a regular, scheduled supervisory activity that includes a review of fair lending risk.
- Examiners should use copies of the technical compliance checklist to review in detail approved and denied consumer, business, and residential real estate files. If there appear to be any technical violations in those files, the violations should be written up and discussed with management. The examiners should maintain one master checklist to note any observed recurrence of the violations which would aid a comparative file review (if there is one).

Technical Compliance Checklist

The worksheet beginning on the following page can be used to review audit workpapers, evaluate bank policies, perform transaction testing, and assess training as appropriate. Only complete those aspects of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the workpapers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the workpapers. When performing transaction testing, a "No" answer indicates a possible violation and should be explained in the workpapers. If a line item is not applicable within the area you are reviewing, simply indicate "NA."

Underline the applicable use:

- Audit
- Bank Policies
- Transaction Testing

NOTE: Citations are to Regulation B, 12 CFR 202.1 et seq., unless indicated otherwise.

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Information for Monitoring Purposes			
1. Do files for purchase and refinance loans for primary residences that are secured by the dwelling show that the bank requested monitoring information (§202.13(a) and (b)) and that it noted this information on the application form or on a separate form referring to the application (§202.13(b)): a. Ethnicity, using the categories "Hispanic or Latino," and "Not Hispanic or Latino"; and race, using the categories "American Indian or Alaska Native," "Asian," "Black or African American," "Native Hawaiian or Other Pacific Islander," and "White," and allowing applicants to select more than one racial designation (Comment 13(b)-1)? b. Sex? c. Marital status, using the categories married, unmarried, and separated? d. Age? *NOTE: Examiners should ensure that the bank limits its requests for government monitoring infoormation to only those loans secured by the applicant's principal dwelling, as required in §202.5(a)&(b).*			
2. Does the form used to collect monitoring information contain written notice that it is for federal government monitoring of compliance with federal statutes prohibiting discrimination on those bases, and that the bank must note ethnicity, race and sex on the basis of sight and/or surname if the applicant chooses not to do so, or does the loan file indicate that the borrower was otherwise notified of this fact? (§202.13(c))			
3. Does the bank note on the monitoring form applicant's refusals to disclose monitoring information? (§202.13(b))			
4 a. If the bank takes applications in person (including by electronic media that allows the bank to see the applicant), and if the applicant refuses to provide the monitoring information, does the bank, to the extent possible on the basis of sight or surname, note on the form the ethnicity, race and sex of each applicant? (§202.13(b)), Comment 13(b)-4)			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
General Rules (cont.)			
b. If the bank receives applications by mail, telephone, or electronic media and if it is not evident on the face of the application how it was received, does the bank indicate on the form or in the loan file how it was received? (Comments 13(b)-3, -4)			
5. Are written applications used for home purchase and refinance transactions? (§202.4(c))			
6. Are written disclosures clear, conspicuous and except for those required by §202.5 and §202.13, in a form the applicant can retain? (§202.4(d))			
Rules Conncerning Requests for Information			
7. Do guidance and forms exclude requests for information relative to birth control practices, childbearing abilities, or childbearing or child-rearing intentions of the applicant, and does the loan file indicate that the bank did not otherwise inquire about these topics? (§202.5(d)(3))			
8. Does the loan file indicate that the bank did not request information about spouses except for transactions which: a. The spouse will be permitted to use the account, b. The spouse will be laible on the account, c. The applicant is relying on the spouse's income as a basis for repayment of the credit requested, d. The applicant resides in a community property state or is relying on property in such a state for repayment, or e. The applicant relies on alimony, child support, or separate maintenance payments from the spouse or the former spouse to repay the debt? (§202.5(c))			
9. In the case of individual unsecured credit, does the loan file indicate that the bank made inquiries about the marital status of the applicant only when the applicant resides in a community property state or when community property is a basis for repayment of the debt, and do guidance and forms for unsecured individual loans include these inquiries? (§202.5(d)(1))			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Rules Conncerning Requests for Information (cont.)			
10. For loans other than individual unsecured credit, are inquiries into marital status no more extensive than obtaining the applicant's status as "married," "unmarried," or "separated"? (§202.5(d)(1))			
11. If the loan file indicates that information was requested regarding whether income on the application is derived from alimony, child support, or separate maintenance payments, do guidance and forms ensure that the applicant is informed that such income need not be revealed if the applicant does not want the bank to consider the information in determining the applicant's creditworthiness? (§202.5(d)(2))			
12. Is any special purpose program established and administered so as to avoid discriminating on a prohibited basis? (§202.5(a)(3), §202.8)			
13. If the creditor collects information (in addition to required government monitoring information) on the race, color, religion, national origin, or sex of the applicant for purposes of a "self-test": a. Does the "self-test" meet the requirements of §202.15? b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that: 1. Applicant isn't required to provide information? 2. The bank is requesting information to monitor its compliance with ECOA? 3. Federal law prohibits the bank from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information? 4. If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person? (§202.5(b))			
14. When a title, such as Ms., Miss, Mrs., or Mr., is requested on the application, does the form disclose that such designation is optional, and does the application form otherwise use only terms neutral as to sex? (§202.5(b)(2))			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Rules Concerning Extensions of Credit			
15. For joint applications, do application files indicate an applicant's intent to apply for joint credit at the time of application? (§202.7(d)(1)-(3))			
Notifications			
16. Do files show that the bank notified non-commercial applicants in writing of: a. Action taken, whether approval, counteroffer, or adverse action (within 30 days of receipt of a completed application), unless the application is approved and the parties contemplate that the applicant who has yet to inquire about the status of the application, will do so within 30 days after applying? (§202.9(a)(1)(i), §202.9(e)) b. Adverse action because of incompleteness or a notice of missing information and that the information must be provided within a designated reasonable period for the application to be considered (within 30 days of receipt of the incomplete application)? (§202.9(a)(1)(ii) and (c)(2)) c. Adverse action (within 30 days of taking such action) on existing accounts? (§202.9(a)(1)(iii)) d. Adverse action (within 90 days after notifying the applicant of a counteroffer), if the applicant has not accepted the counteroffer (unless the notice of adverse action on the credit terms sought accompanied the counteroffer)? (§202.9(a)(1)(iv))			
17. Do adverse action notices in denied files (as applicable) contain: a. A written statement of action taken and the name and address of the bank? (§202.9(a)(2)) b. A written statement substantially similar to that in §202.9(b)(1)? c. A written statement of specific reasons for the action taken or written disclosure as specified in §202.9(a)(2)(ii)) of the applicant's right to such a statement? (§202.9(a)(2)(i) and (ii))			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Notifications (cont.)			
18. In connection with credit other than an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, for businesses with revenues of $1 million or less in the preceding fiscal year, where the reasons were not given orally or in writing when adverse action was taken (under timeframes in §202.9(a)(1)), was the disclosure of the right to a statement of reasons given in writing at the time of application in accordance with §202.9(a)(3)(i)(B)?			
19. For businesses with revenues in excess of $1 million in the preceding fiscal year, or for extensions of trade credit, credit incident to a factoring agreement or other similar types of business credit, was the notification of action taken communicated within a reasonable time orally or in writing, and were reasons for denial and the ECOA notice provided in writing in response to a written request for the reasons by the applicant within 60 days of the bank's notification? (§202.9(a)(3)(ii)(B))			
20. Does the statement of reason(s) for adverse action contain the principal and specific reason(s) for the action? (§202.9(b)(2))			
21. When an application involves multiple applicants, does the bank provide notification of action to the primary applicant, when one is readily apparent? (§202.9(f))			
22. When an application is made to multiple creditors by a third party, and no credit is offered or extended by any of the creditors, does the bank ensure that the applicant is properly informed of the action taken? (§202.9(g))			
Furnishing Credit Information			
23. If the bank furnishes information: a. Does the bank designate any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party) and any existing account within 90 days of the			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Furnishing Credit Information (cont.)			
b. Does the bank furnish joint account information to consumer reporting agencies in a manner that provides access to such information in the name of each spouse? (§202.10(b))			
24. When the bank responds to an inquiry for credit information regarding a joint account, is the information furnished in the name of the spouse for whom the information is requested? (§202.10(c))			
Record Retention			
25. Does the bank retain application files for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after date of notice of action taken or notice of incompleteness the following (as applicable) containing: a. The application and all supporting material? (§202.12(b)(1)(i)) b. All information obtained for monitoring purposes? (§202.12(b)(1)(i)) c. The notification of action taken, if written, or any notation or memorandum by the bank, if made orally? (§202.12(b)(1)(ii)(A)) d. A statement of specific reasons for adverse action, if written, or any notation or memorandum by the bank, if made orally? (§202.12(b)(1)(ii)(B)) e. Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§202.12(b)(1)(iii))			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Record Retention (cont.)			
26. Does the bank retain application files in connection with existing accounts for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after date of notice of action taken containing: a. Any written or recorded information concerning the adverse action? (§202.12(b)(2)(i)) b. Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§202.12(b)(2)(ii))			
27. Does the bank retain application files for other applications, for which §202.9's notification requirements do not apply, retain for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after date the bank receives the application, containing all written or recorded information in its possession concerning the applicant, including any notation of action taken? (§202.12(b)(3))			
28. For business credit applications from businesses with gross revenues of more than $1 million in the previous fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, does the bank retain records for at least 60 days after notifying the applicant of the action taken, or for 12 months after notifying the applicant of the action taken if the applicant requests in the 60-day time period the reasons for denial or that the records be retained?			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Record Retention (cont.)			
29. For prescreened solicitations, does the bank retain for 25 months (12 months for business credit except for businesses with gross revenues of more than $1 million in the previous fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the offer of credit was made: a. The text of any prescreened solicitation; b. The list of criteria the bank used to select potential recipients of the solicitation; and c. Any correspondence related to complaints (formal or informal) about the solicitation? (§202.12(b)(7))			
30. Was information relative to an investigative enforcement or civil action retained until final disposition of the matter? (§202.12(b)(4))			
31. If the bank conducts a self test pursuant to §202.15, does it after completion of the test, retain all written and recorded information: a. For 25 months? b. Until final disposition if it has actual notice that it is under investigation or subject to enforcement proceedings or a civil action? (§202.12(b)(6))			
32. Are applicants routinely given copies of appraisal reports used in connection with applications for credit secured by a lien on a dwelling, or are they provided with written notice (as specified in §202.14(a)(§2)(i)), no later than when notified of the action taken under §202.9, of their right to obtain a copy of the appraisal report, and provided a copy of the appraisal report upon request in the manner specified in §202.14(a)(§2)(ii)?			

Technical Compliance Checklist Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Requirements for Electronic Communications			
NOTE: The Federal Reserve Board has not yet mandated compliance with §202.16. Banks may follow §202.16 or their own policies as long as those policies comply with the requirements of the E-Sign Act, 15 USC §7001.			
33. If the bank uses electronic communication to provide any of the disclosures required by ECOA and Regulation B to be in writing, are the disclosures clear and conspicuous and in a form the applicant may retain? (§202.16(b))			
34. If the bank uses electronic communications to provide disclosures that are required to be in writing (other than disclosures under §202.9(a)(3)(i)(B), §202.13(a), and §202.14(a)(2)(i), if provided on or with the application) does the bank obtain the applicant's affirmative consent? (§202.16(c))			
35. If the bank uses electronic communication to provide disclosures, does the bank either a. Send the disclosures to the applicant's electronic address; or b. Make the disclosure available at another location and so notify the applicant by sending a notice that identifies the account involved and the address of the Internet Web site or other location where the disclosure is available, and make the disclosure available for at least 90 days after it is first available or after it sends the notice of the other location, whichever is later? (§202.16(d))			
36. If a disclosure provided by electronic communication is returned, does the bank takes reasonable steps to attempt redelivery, using information that is in its files? (§202.16(e))			
General Rule			
37. Do the bank's marketing or advertising materials (including lobby signs or other displays) contain any information that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application? (§202.4(b))			

References

The following can be found at the fair lending webpage:
http://fdic01/division/dsc/cra/fairlending/flrr.html

- Equal Credit Opportunity Act
- Regulation B (including Supplement I, Official Staff Interpretations)

FIL 02-09: Guidance on Avoiding Violations of the Spousal Signatures Provisions of Regulation B
http://www.fdic.gov/news/news/financial/2002/fil0209.html

FIL 06-04: Spousal Signature Provision of Regulation B
http://www.fdic.gov/news/news/financial/2004/fil0604a.html

DCA RD Memo 97-031: Data Collection Subsequent to Extensions of Credit
http://www.fdic01/division/dsc/memos/memos/direct/6452-2.pdf

Job Aids

Fair Lending Discussion Board
http://wasiis102p/dcaqc/

(This page intentionally left blank.)

Fair Housing Act (FHAct)

Overview

The examination procedures in this section are primarily for the technical compliance review. Although the fair lending procedures are addressed under a separate section of the Handbook; findings from the technical review may aid the review for fair lending. These procedures should be conducted to ensure compliance with all sections of the subject regulation.

Background and Introduction

The Fair Housing Act (FHAct) prohibits discrimination in all aspects of "residential real-estate related transactions," including but not limited to

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;
- Selling, brokering, or appraising residential real estate; and
- Selling or renting a dwelling.

The FHAct prohibits discrimination based on

- Race or color;
- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); or
- Handicap.

The Department of Housing and Urban Development's (HUD) regulations implementing the FHAct are found at 24 CFR Part 100. The FDIC's Part 338, Fair Housing, is the implementing regulation for the FHAct.

Examination Procedures

- Examiners must review compliance with these provisions in all compliance examinations that include review of files, and they may elect to do so as part of a regular, scheduled supervisory activity that includes a review of fair lending risk.
- Examiners must determine whether the financial institution's policies, procedures, and internal controls are adequate for compliance with FHAct.

Technical Compliance Checklist

Recordkeeping Requirements

Determine if the financial institution that makes home purchase and refinance loans requests and retains the following initial data on each home purchase loan applicant (excluding applications received by telephone) (§338.7):

- Race/national origin
- Sex
- Marital status
- Age

Disclosure

Determine that the institution informs the applicant(s) that the data regarding race/national origin, marital status, age, and sex is being requested by the Federal government for the purposes of monitoring compliance with the Federal statutes that prohibit discrimination on those bases. The institution shall also inform the applicant(s) that the institution is required to note the race/national origin and sex based on visual observation should the applicant(s) choose not to provide his/her race/national origin, marital status, age, and sex. (12 CFR 202.13(c))

Compilation of Loan Data

Determine that banks and other lenders required to file a Home Mortgage Disclosure Act loan application register (LAR) with the Federal Deposit Insurance Corporation maintain, update and report such LAR's in accordance with Federal Reserve Board Regulation C, Home Mortgage Disclosure (Regulation C), (§ 338.8).

Record Retention

Determine that the institution retains the monitoring information requested from applicants for 25 months after the institution notifies an applicant of the action taken on an application (12 CFR 202.12). This requirement also applies to records of home purchase loans originated by the institution and subsequently sold.

Mortgage Lending of a Controlled Entity

Determine through interviews with financial institution staff and review of the loan files, whether the institution:

- Refers any applicants to a controlled entity, and
- Purchases any home loans or home improvement loans (as defined by Regulation C) originated by the controlled entity as a condition to transacting any business with the controlled entity.

If this arrangement exists, the financial institution is required to enter into a written agreement with that entity. The written agreement shall provide that the entity will:

- Comply with §338.3, §338.4, and §338.7, and if otherwise subject to Regulation C Home Mortgage Disclosure, §338.8 (§338.9(a));
- Provide its books and records for examination by the FDIC (§338.9(b)); and

- Comply with all instructions and orders issued by the FDIC with respect to its home loan practices (§338.9(b)).

Advertisements and Public Notices

1. If a printed advertisement of a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling is used, determine whether the Equal Housing Lender or Equal Housing Opportunity logotype and legend are appropriately used.

   NOTE: The Equal Housing Lender (symbol of house) with legend (the phrase "Equal Housing Lender") or the Equal Housing Opportunity (symbol of house) with the legend (the phrase "Equal Housing Opportunity") must be used together, respectively. (§338.3)

   NOTE: This section may be satisfied in an oral advertisement by stating "Equal Housing Lender" or "Equal Housing Opportunity."

2. Determine that the required Fair Housing Poster, either the Equal Housing Lender poster or HUD's Equal Housing Opportunity poster is:
   - 11 x 14 inches in size;
   - Conspicuously displayed in a central location within the bank where deposits are received or residential real estate-related transactions are made (§338.4); and
   - The Equal Housing Lender poster contains the correct text in the proper format of §338.4(b) or 24 CFR Part 110.25(a) for HUD's Equal Housing Opportunity poster.

References

The following can be found at the fair lending webpage:
http://fdic01/division/dsc/cra/fairlending/flrr.html

- Fair Housing Act, 42 USC §3601
- 12 CFR Part 338

Job Aids

Fair Lending Discussion Board
http://wasiis102p/dcaqc/

Home Mortgage Disclosure Act[1]

Introduction

The Home Mortgage Disclosure Act (HMDA) was enacted by the Congress in 1975 and is implemented by the Federal Reserve Board's (FRB's) Regulation C, Home Mortgage Disclosure, 12 CFR Part 203 (Regulation C). The period of 1988 through 1992 saw substantial changes to HMDA. Especially significant were the amendments to the act resulting from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Coverage was expanded in the FIRREA amendments to include many independent nondepository mortgage lenders, in addition to the previously covered banks, savings associations, and credit unions. Coverage of independent mortgage bankers was further expanded effective January 1, 1993, with the implementation of amendments contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). For a more detailed discussion of the history of HMDA, *see* the FFIEC's web site at www.ffiec.gov/hmda/history2.htm.

HMDA grew out of public concern over credit shortages in certain urban neighborhoods. The Congress believed that some financial institutions had contributed to the decline of some geographic areas by their failure to provide adequate home financing to qualified applicants on reasonable terms and conditions. Thus, one purpose of HMDA and Regulation C is to provide the public with information that will help show whether financial institutions are serving the housing credit needs of the neighborhoods and communities in which they are located. A second purpose is to aid public officials in targeting public investments from the private sector to areas where they are needed. Finally, the FIRREA amendments of 1989 require the collection and disclosure of data about applicant and borrower characteristics to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

As the name implies, HMDA is a disclosure law that relies upon public scrutiny for its effectiveness. It does not prohibit any specific activity of lenders, and it does not establish a quota system of mortgage loans to be made in any Metropolitan Statistical Area (MSA)[2] or other geographic area as defined by the Office of Management and Budget.

Financial institutions must report data regarding loan originations, applications, and loan purchases, as well as requests under a pre-approval program (as defined in §203.2(b)) if the pre-approval request is denied or results in the origination of a home purchase loan. HMDA requires lenders to report the ethnicity, race, gender, and gross income of mortgage applicants and borrowers. Lenders must also report information regarding the pricing of the loan and whether the loan is subject to the Home Ownership and Equity Protection Act, 15 USC 1639. Additionally, lenders must identify the type of purchaser for mortgage loans that they sell. Some lenders have the option of indicating the reasons for their decisions to deny a loan application. (Lenders regulated by the OCC or OTS must indicate the reasons for denial.).

Regulation C requires institutions to report lending data to their supervisory agencies on a loan-by-loan and application-by-application basis by way of a "register" reporting format. The supervisory agencies, through the Federal Financial Institutions Examination Council (FFIEC), compile this information in the form of individual disclosure statements for each institution, and in the form of aggregate reports for all covered institutions within each MSA. In addition, the FFIEC produces other aggregate reports that show lending patterns by median age of homes and by the central city or non-central city location of the property. The public may obtain the individual disclosures and aggregate reports from the FFIEC or from central depositories located in each MSA. Individual disclosure statements may also be obtained from financial institutions.

Applicability

The regulation covers two categories of financial institutions. The first category is a "depository institution," which the regulation defines as a bank, savings association, or a credit union that:

- on the preceding December 31, had assets in excess of the annually published asset threshold;
- on the preceding December 31, had a home or branch office in an MSA;
- in the preceding calendar year, originated at least one first-lien home purchase loan (including or a refinancing of such loan) on a one-to-four-family dwelling; and
- meets one of the following criteria: (1) the institution is federally insured or regulated; (2) the mortgage loan referred to is federally guaranteed, insured, or supplemented; or (3) the institution intended to sell the loan to Fannie Mae or Freddie Mac.

The second category is a for-profit, nondepository "mortgage lending institution." A nondepository mortgage lending institution is covered if:

- in the preceding calendar year, it originated home purchase loans (including refinancings of home purchase loans) that either: (1) equaled ten percent or more of its loan

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 04-015: Revised Interagency Examination Procedures for the Home Mortgage Disclosure Act.

[2] The institution may or may not have a physical presence in the MSA per §203.2(c)(2) of Regulation C.

origination volume, measured in dollars; or (2) equaled $25 million or more;

- on the preceding December 31, had a home or branch office in an MSA[3]; and
- either: (1) on the preceding December 31, had total assets of more than $10 million, counting the assets of any parent corporation; or (2) in the preceding calendar year, originated at least 100 home purchase loans, or including refinancings of home purchase loans.

For purposes of this discussion and the examiner procedures, the term "financial institution" will signify both a depository and a nondepository institution.

The definition of mortgage lending institution applies to majority-owned mortgage lending subsidiaries of depository institutions and, since 1990, to independent mortgage companies. Mortgage lending subsidiaries of bank and savings and loan holding companies, as well as savings and loan service corporations, have been covered by HMDA since 1988. Mortgage lending subsidiaries are treated as distinct entities from their "parent," and must file separate reports with their parent's supervisory agency.

The FRB may exempt from Regulation C state-chartered or state-licensed financial institutions if they are covered by a substantially similar state law that contains adequate provision for enforcement by the state. As of January 1, 2004, no exemptions are in effect.

Compilation of Loan Data

For each calendar year, a financial institution must report data regarding its applications, originations, and purchases of home purchase loans, home improvement loans, and refinancings. Loans secured by real estate that are neither refinancings nor made for home purchase or home improvement are not reported. Data must also be given for loan applications that did not result in originations: applications approved by the institution by but not accepted by the applicant, denied, withdrawn, and or closed for incompleteness. Required reporting also includes certain denials of requests for pre-approval of a home purchase loan under a program in which a lender issues a written commitment to lend to a creditworthy borrower up to a specific amount for a specific time if they resulted in an origination or denial.

Loan Information

For each application or loan, institutions are required to identify the purpose (home purchase, home improvement, or refinancing), lien status, and whether the property relating to the loan or loan application is to be owner-occupied as a principal dwelling. As defined by Regulation C, a home purchase loan is a loan secured by a dwelling and made for the purpose of purchasing that (or another) dwelling. A dwelling is a residential structure that may or may not be attached to real property, located in a state, the District of Columbia or the Commonwealth of Puerto Rico. It includes an individual condominium or cooperative units, a mobile or manufactured home, and a multifamily structure such as an apartment building. A home improvement loan is defined by the regulation as one that is at least in part for the purpose of repairing, rehabilitating, remodeling or improving a dwelling or the real property on which the dwelling is located. Home improvement loans may be secured or unsecured. Home improvement loans not secured by a dwelling should be reported only if the institution classifies the loan as a home improvement loan; dwelling secured home improvement loans should be reported without regard to classification. Finally, a refinancing is defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower. For coverage purposes (i.e., to determine whether or not an institution is covered by the rule HMDA), the existing obligation must be a home purchase loan and both the new and existing obligation must be secured by first liens on dwellings. For reporting purposes, both the existing obligation and the new obligations must be secured by liens on dwellings.

In addition, the regulation requires financial institutions to report data so as to identify the following general loan types: conventional, FHA-insured, VA-guaranteed, and FSA/RHS guaranteed. Institutions must report the property type as a one-to-four family dwelling, multifamily dwelling, or manufactured housing. The amount of the loan or loan application, application date, action date, and the type of action taken must also be reported.

Property Location

Certain geographic location information must be reported by financial institutions for loans on, and applications for, properties in any MSA where the institution has a home or branch office[4]. This geographic data is optional for loans on properties located outside these MSAs or outside any MSA, except in the case of large financial institutions subject to additional data reporting requirements under the Community Reinvestment Act (CRA). The geographic information consists of the MSA or MD number, state and county codes, and the census tract number of the property to which the loan or loan application relates.

Large institutions subject to both the CRA and HMDA must collect and report geographic information for all loans and

[3] In the case of an MSA divided into Metropolitan Divisions (MDs), the relevant unit for this purpose is the MD.

[4] In a county with less than 30,000 in population, the institution may enter NA.

applications (whether located in an MSA or not), not just for loans and applications relating to property in MSAs where the institution has a home or branch office.[5] Under the CRA, a large institution is a bank or savings association that has assets of $1 billion or more as of December 31 of the prior two calendar years. The asset threshold will be adjusted annually by the banking agencies based upon annual changes to the Consumer Price Index.

Applicant Information

In addition, institutions must report data regarding the ethnicity, race, sex, and annual income of applicants for applications and loans originated loans; reporting these data is optional for purchased loans purchased. Information regarding the ethnicity, race, and the sex of the borrower or applicant must be requested by the lender, including applications made entirely by telephone, mail, or Internet. If the information is not provided by the applicant and if the application is submitted in person, the lender is required to note the information on the basis of visual observation or surname. Regulation C contains a model form that can be used for the collection of data on ethnicity, race, and sex. Alternatively, the form used to obtain monitoring information under 12 CFR §202.13 of the FRB Regulation B (Equal Credit Opportunity) may be used.

If an institution originates or purchases a loan and then sells it in the same calendar year, it must report the type of entity that purchased the loan. Except in the case of large secondary market purchasers, such as Fannie Mae and Freddie Mac, the exact purchaser need not be identified. For example, an institution may indicate that it had sold a loan to a bank, without identifying the particular bank.

Pricing-Related Data

Institutions must report the rate spread between the annual percentage rate (APR) on a loan at consummation and the yield on comparable Treasury securities if the spread is equal to or greater than 3 percentage points for first-lien loans, or equal to or greater than 5 percentage points for subordinate-lien loans. The rate-spread reporting is required only on originations of home purchase loans, dwelling-secured home improvement loans, and refinancings. The following are excluded from the rate-spread reporting requirement: (1) applications that are incomplete, withdrawn, denied, or approved but not accepted; (2) purchased loans; (3) home-improvement loans not secured by any dwelling; (4) assumptions; (5) home equity lines of credit; and (6) loans not subject to Regulation Z. To determine the applicable Treasury security yield, the financial institution must use the table published on the FFIEC's Web site (http://www.ffiec.gov/hmda) entitled "Treasury Securities of Comparable Maturity under Regulation C."

Lenders must also report whether the loan is subject to the Home Ownership and Equity Protection Act (HOEPA), 15 USC 1639. A loan becomes subject to HOEPA when the APR or the points and fees on the loan exceed the HOEPA triggers. (Additional information on HOEPA coverage is found in the Truth in Lending Act and HOEPA examination procedures.)

Lenders must also report the lien status of the loan or application (first lien, subordinate lien, or not secured by a lien on a dwelling).

Optional Data

Finally, financial institutions supervised by the Federal Reserve or FDIC may, at their option, report the reasons for denying a loan application. Financial institutions regulated by the OCC and the OTS, including subsidiaries of national banks and savings associations, are required to provide reasons for denials. Credit unions regulated by the NCUA are also required to provide reasons for denial. Institutions may also choose to report certain requests for pre-approval that are approved by the institution but not accepted by the applicant and home equity lines of credit made in whole or in part for the purpose of home improvement or home purchase.

Excluded Data

A financial institution should not report loan data for:

- loans originated or purchased by the institution acting as trustee or in some other fiduciary capacity;
- loans on unimproved land;
- temporary financing (such as bridge or construction loans);
- the purchase of an interest in a pool of loans (such as mortgage-participation certificates);
- the purchase of mortgage loan servicing rights; or
- loans acquired as part of a merger or acquisition or acquisition of all the assets and liabilities of a branch office.

Reporting Format

Financial institutions are required to record data regarding each application for, and each origination and purchase of, home purchase loans, home improvement loans, and refinancings on a Loan/Application Register, also known as the HMDA-LAR. Financial institutions are also required to record data regarding requests under a pre-approval program (as defined in §203.2(b)), but only if the pre-approval request is denied or results in the origination of a home purchase loan. Transactions are to be reported for the year in which final action was taken. If a loan application is pending at the end of

[5] A non-depository institution is deemed to have a branch office in an MSA or MD if, in the preceding calendar year, it received applications for, originated or purchased, five or more home purchase loans, home improvement loans, or refinancings in that MSA or MD.

the calendar year, it will be reported on the HMDA-LAR for the following year, when the final disposition is made. Loans originated or purchased during the calendar year must be reported for the calendar year of origination even if they were subsequently sold.

The HMDA-LAR is accompanied by a listing of codes to be used for each entry on the form. Detailed instructions and guidance on the requirements for the register are contained in Appendix A (Forms and Instructions for Completion of HMDA LAR) to Regulation C. Additional information is available in the FFIEC publication, "A Guide to HMDA Reporting, Getting it Right!" and on the FFIEC web site.

Financial institutions must record data on their HMDA-LAR within 30 calendar days of the end of the calendar quarter in which final action was taken. Financial institutions, however, have flexibility in determining how to maintain the HMDA-LAR since the entries need not be grouped in any prescribed fashion. For example, an institution could record home purchase loans on one HMDA-LAR and home improvement loans on another; alternatively, both types of loans could be reported on one register. Similarly, separate registers may be kept at each branch office, or a single register may be maintained at a centralized location for the entire institution. These separate registers must be combined into one consolidated register when submitted to the relevant supervisory agencies.

For each calendar year, a financial institution must submit to its supervisory agency its HMDA-LAR, accompanied by a Transmittal Sheet. Unless it has 25 or fewer reportable transactions, an institution is required to submit its data in automated form. For registers submitted in paper form, two copies must be mailed to the institution's supervisory agency. For both automated and hard-copy submissions, the layout of the register that is used must conform exactly to that of the register published by the FRB as Appendix A to Regulation C.

The HMDA-LAR must be submitted to the financial institution's regulatory agency by March 1 following the calendar year covered by the data. The FFIEC then will produce a disclosure statement for each institution, cross-tabulating the individual loan data in various groupings, as well as an aggregate report for each MSA. The disclosure statements will be mailed to the financial institutions.

Disclosure

As the result of amendments to HMDA incorporated within the Housing and Community Development Act of 1992, an institution must make its disclosure statement available to the public at its home office within three business days of receipt. An institution must also either (1) make its disclosure statement available to the public in at least one branch office in each additional MSA or MD where it has offices within ten business days of its receipt from the FFIEC, or (2) post the address for requests in each branch office in each additional MSA or MD where it has offices, and send the disclosure statement within 15 calendar days after receiving a written request.

Also, an institution must make its loan application register available to the public after deleting the following fields which specifically identify a loan: application or loan number, date application received, and date of action taken. These deletions/modifications are required to protect the privacy interests of applicants and borrowers. The modified HMDA-LAR for a given year must be publicly available for the previous calendar year by March 31 of the following year for requests received on or before March 1, and within 30 days for requests received after March 1.

The FFIEC also produces aggregate tables to illustrate the lending activity of all covered financial institutions in each MSA or MD. These tables, and the individual disclosure statements are sent to central data depositories, such as public libraries, in each MSA or MD. A list of depositories is available from the FFIEC.

A financial institution must retain its full (unmodified) HMDA-LAR for at least three years for examination purposes. It must also be prepared to make each modified HMDA-LAR available for three years and each FFIEC disclosure statement available for five years. Institutions may impose reasonable fees for costs incurred in providing or producing the data for public release.

Finally, institutions must post a notice at their home office and at each branch in an MSA, to advise the public of the availability of the disclosure statements.

Enforcement

As set forth in §305 of HMDA (12 USC 2804), compliance with the act and regulation is enforced by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Thrift Supervision, and the U.S. Department of Housing and Urban Development. Administrative sanctions, including civil money penalties, may be imposed by the supervisory agencies.

An error in compiling or recording loan data is not a violation of the act or the regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adopted to avoid such errors.

Examination Objectives

1. To appraise the quality of the financial institution's compliance management system to ensure compliance with the Home Mortgage Disclosure Act and Regulation C.
2. To determine the reliance that can be placed on the financial institution's compliance management system, including internal controls, policies, procedures, and compliance review and audit functions for the Home Mortgage Disclosure Act and Regulation C.
3. To determine the accuracy and timeliness of the financial institution's submitted HMDA-LAR.
4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

Examination Procedures

A. Initial Procedures

Depository Institutions

1. Determine whether the depository institution is subject to the requirements of HMDA and Regulation C by determining if the regulatory criteria addressed in §203.2(e)(1)(i) - §203.2(e)(1)(iv) are met.

Non-depository Institutions

2. Determine whether the depository institution has a majority- owned mortgage subsidiary that meets relevant criteria contained in §203.2(e)(2)(iii)(A) – §203.2(e)(2)(iii)(B). If all relevant criteria are met, then the subsidiary is subject to the requirements of HMDA and Regulation C.
3. Determine whether there were any mergers or acquisitions since January 1 of the preceding calendar year.
   a. Determine whether all required HMDA data for the acquired financial institutions were reported separately or in consolidation. Examination procedures that follow concerning accuracy and disclosure also apply to an acquired financial institution's data, even if separately reported.

NOTE: If HMDA and Regulation C are applicable, then the following examination procedures should be performed separately for the depository institution and any of its majority-owned mortgage subsidiaries; and a separate checklist should be completed for each institution subject to HMDA and Regulation C. Also, when determining whether a financial institution is subject to HMDA, the examiner should remain cognizant of any newly created MSAs and changes in MSA boundaries, including counties which may have been added or deleted from an MSA, thus causing a financial institution either to become a new HMDA reporter or no longer be a HMDA reporter. Refer to the FFIEC's web site and to the booklet, "A Guide to HMDA Reporting, Getting It Right!" This can be a source of reference, as it lists counties in an MSA by state.

B. Evaluation of Compliance Management

Examiners should obtain necessary information necessary in order to make a reasonable assessment regarding the institution's ability to collect data regarding applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year in accordance with the requirements of the HMDA and Regulation C.

Examiners should determine, through a review of written policies, internal controls, the HMDA Loan Application Register (HMDA-LAR), and discussions with management, whether the financial institution has adopted and implemented comprehensive procedures to ensure adequate compilation of home mortgage disclosure information in accordance with §203.4(a)-(e).

During the review of the financial institution's system for maintaining compliance with HMDA and Regulation C obtain and review policies and procedures along with any applicable audit and compliance program materials to determine whether:

1. Policies and procedures and training are adequate, on an ongoing basis, to ensure compliance with the Home Mortgage Disclosure Act and Regulation C.
2. Internal review procedures and audit schedules comprehensively cover all of the pertinent regulatory requirements associated with HMDA and Regulation C.
3. The audits or internal analysis performed include a reasonable amount of transactional analysis, written reports that detail findings and recommendations for corrective actions.
4. Internal reviews include any regulatory changes that may have occurred since the prior examination.
5. The financial institution has assigned one or more individuals responsibility for oversight, data update, and data entry, along with timeliness of the financial institution's data submission. Also determine whether the Board of Directors is informed of the results of all analyses.
6. The individuals who have been assigned responsibility for data-entry receive appropriate training in the completion of the HMDA-LAR and receive copies of Regulation C, Instructions for Completion of the HMDA-LAR (Appendix A of Regulation C), the Staff Commentary to Regulation C, and the FFIEC's "Guide to HMDA Reporting, Getting it Right!" in a timely manner.

7. The institution has ensured effective corrective action in response to previously identified deficiencies.
8. The financial institution performs HMDA-LAR volume analysis from year-to-year to detect increases or decreases in activity for possible omissions of data.
9. The financial institution maintains documentation for those loans it packages and sells to other institutions.

C. Evaluation of Policies and Procedures
Evaluate whether the institution's informal procedures and internal controls are adequate to ensure compliance with HMDA and Regulation C. Consider the following:

1. Whether the individual(s) assigned responsibility for the institution's compliance with HMDA and Regulation C possesses an adequate level of knowledge and has established a method for staying abreast of changes to laws and regulations.
2. If the institution ensures that individuals assigned compliance responsibilities receive adequate training to ensure compliance with the requirements of the regulation.
3. Whether the individuals assigned responsibility for the institution's compliance with HMDA and Regulation C know whom to contact, at the financial institution or their supervisory agency, if they have questions not answered by the written materials.
4. If the institution has established and implemented adequate controls to ensure that separation of duties exists (e.g. data entry, review, oversight, and approval).
5. Any internal reports or records documenting policies and procedures revisions as well as any informal self-assessment of the institution's compliance with the regulation.
6. If the institution offers pre-approvals, whether the institution's pre-approval program meets the specifications detailed in the HMDA regulation. If so, whether the institution's policies and procedures provide adequate guidance for the reporting of pre-approval requests that are approved or denied in accordance with the regulation.
7. Whether the institution's policies and procedures address the reporting of (1) non-dwelling secured loans that are not dwelling-secured that are originated in whole or in part for home improvement and classified as such by the institution; and (2) dwelling-secured loans that are originated in whole or in part for home improvement, whether or not classified as such.
8. Whether the institution established a method for determining and reporting the lien status for all originated loans and applications.
9. Whether the institution's policies and procedures contain guidance for collecting ethnicity, race and sex for all loan applications, including, particularly, applications made by telephone, mail and Internet.
10. Whether the institution's policies and procedures address the collection of the rate spread or (difference between the APR on the loan and the comparable Treasury yield) and whether the institution has established a system for tracking rate lock dates and calculating the rate spread adequately determining the APR spread.
11. Whether the institution's policies and procedures address how to determine if a loan is subject to the Home Ownership and Equity Protection Act and the reporting of applications involving manufactured home loans.
12. Whether the HMDA-LAR is updated within 30 days after the end of each calendar quarter, beginning each January 1 of each calendar year.
13. Whether data are collected at all branches, and if so, whether the appropriate personnel are sufficiently trained to ensure that all branches are reporting data under the same guidelines.
14. Whether the financial institution's loan officers (including loan officers in the commercial loan department who may handle loan applications reportable under HMDA, including loans and applications for multi-family or mixed-use properties and small business refinances secured by residential real estate) are informed of the reporting requirements necessary to assemble the information.
15. Whether the Board of Directors has established an independent review of the policies, procedures, and HMDA data to ensure compliance and accuracy, and is advised each year of the accuracy and timeliness of the financial institution's data submissions.
16. What procedures the institution has put in place to comply with the requirement to submit data in machine-readable form and whether the institution has some mechanism in place to ensure the accuracy of the data that are submitted in machine-readable form.
17. Whether the financial institution's loan officers are familiar with the disclosure, reporting and retention requirements associated with the loan application registers and the FFIEC public disclosure statements.
18. Whether the financial institution's loan officers are familiar with the disclosure statements that will be produced from the data.
19. Whether the financial institution's loan officers are aware that civil money penalties may be considered imposed when an institution has submitted erroneous data and has not established adequate procedures to ensure the accuracy of the data.

20. Whether the financial institution's loan officers are aware that correction and resubmission of erroneous data may be considered required when data are incorrectly reported for at least 5 percent of the loan application records.

D. Transaction Testing

Verify that the financial institution accurately compiled home mortgage disclosure information on a register in the format prescribed in Appendix A of Regulation C, by testing a sample of loans and applications.

The review of the HMDA-LAR, for submitted data, should include a sample of the applications represented on the HMDA-LAR to verify the accuracy of each entry. A sample of the current year's data should also be reviewed. The samples may include the following:

1. Approved and denied transactions subject to HMDA
2. Housing-related purchased loans
3. Withdrawn housing- related loan applications

NOTE: Current calendar year LAR recording errors may also be violations of Section 338.8 of Fair Housing. When conducting the review of the LAR for accuracy, the examiner should review each line and column. Errors in the following data columns would significantly affect the decision of whether to require resubmission: race, sex, income, ethnicity, rate spread, Home Ownership and Equity Protection Act status, type of action taken, census trace, property type, pre-approval indicator, and lien status. Therefore, these areas should be closely reviewed.

E. Disclosure and Reporting

1. Determine whether the financial institution:

   a. Submits its HMDA-LAR to the appropriate supervisory agency no later than March 1 following the calendar year for which the data are compiled and maintains its HMDA-LAR for at least three years thereafter.

      NOTE: Financial institutions that report twenty-five or fewer entries on their HMDA-LAR may collect and report HMDA data in a paper form. Any financial institution opting to submit its data in such a manner must send two copies that are typed or computer printed. They must use the format of the HMDA-LAR, but need not use the form itself.

   b. Makes its FFIEC disclosure statement available to the public at its home office no later than three business days after receiving its statement from the FFIEC.

   c. Either (1) makes its FFIEC disclosure statement available to the public in at least one branch office in each additional metropolitan area MSA or MD where the financial institution has offices within ten business days after receiving the disclosure statement from the FFIEC; or (2) posts the address for sending written requests for the disclosure statement in the lobby of each branch office in additional metropolitan areas MSAs or MDs where the institution has offices and mails or delivers a copy of the disclosure statement within 15 calendar days of receiving the written request.

   d. Makes its modified HMDA-LAR (loan application number, date application received, and date action taken excluded from the data) available to the public by March 31 for requests received on or before March 1, and within 30 days for requests received after March 1.

   e. Has maintained its modified HMDA-LAR for 3 years and its disclosure statement for 5 years. It has policies and procedures to ensure its modified HMDA-LAR and disclosure statement are available to the public during those terms.

   f. Makes available the modified HMDA-LAR and disclosure statement for inspection and copying during the hours the office is normally open to the public for business. If it imposes a fee for costs incurred in providing or reproducing the data, the fee is reasonable.

   g. Posts a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA metropolitan area.

   h. Provides promptly upon request the location of the institution's offices where the statement is available for inspection and copying, or includes the location in the lobby notice.

2. If the financial institution has a subsidiary covered by HMDA, determine that the subsidiary completed a separate HMDA-LAR and either submitted it directly or through its parent to the parent's supervisory agency.
3. Determine that the HMDA-LAR transmittal sheet is accurately completed and that an officer of the financial institution signed and certified to the accuracy of the data contained in their register. (Appendix A of Regulation C) Note: If the HMDA-LAR was submitted via the Internet, this signature should be retained on file at the institution.
4. Review the financial institution's last disclosure statement, HMDA-LAR, modified HMDA-LAR, and any applicable correspondence, such as notices of noncompliance. Determine what errors occurred during the previous reporting period. If errors did occur, determine what steps the financial institution took to correct and prevent such errors in the future.

NOTE: Significant errors should be corrected and resubmitted to:

Federal Reserve Board
Attention: FDIC HMDA Processing
Fifth Floor
1709 New York Avenue, NW
Washington, D.C., 20006

(202) 452-2016 (HMDA Assistance Line)

Adequate notation of errors and omissions should be made on all records currently available to the public. Financial institution controls should be revised and corrected to prevent recurrence. The institution should review 1-3 years of HMDA-LAR data to correct significant inaccuracies.

5. Determine if the financial institution has the necessary tools to compile the geographic information.
   a. Determine if the financial institution uses the U.S. Census Bureau's Census Tract Street Address Lookup Resources for 2000, the Census Bureau's 2000 Census Tract Outline Maps, LandView 5 equivalent materials available from the Census Bureau or from a private publisher, or an automated geocoding system in order to obtain the proper census tract numbers.
   b. If the financial institution relies on outside assistance to obtain the census tract numbers (for example, private "geocoding" services or real estate appraisals), verify that adequate procedures are in place to ensure that the census tract numbers are obtained in instances where they are not provided by the outside source. For example, if the financial institution usually uses property appraisals to determine census tract numbers, it must have procedures to obtain this information if an appraisal is not received; such as in cases where a loan application is denied before an appraisal is made.
   c. Verify that the financial institution has taken steps to ensure that the provider of outside services is using the appropriate 2000 Census Bureau data.
   d. Verify that the financial institution uses current MSA and MD definitions to determine the appropriate MSA and MD numbers and boundaries. MSA definitions and numbers (and state and county codes) are available from the supervisory agency, the "FIPS PUB 8-6, Metropolitan Statistical Areas" (as updated periodically), or "A Guide to HMDA Reporting, Getting it Right!"
6. For banks and savings associations required to report data on small-business, small-farm, and community development lending under the CRA, verify that they also collect accurate data on property located outside metropolitan areas MSAs or MDs in which the institution has a home or branch office, or outside any metropolitan areaMSAs or MDs.

Examination Conclusions

1. Summarize the findings, supervisory concerns, and regulatory violations.
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors; also, determine whether the violation(s) are repetitive or systemic.
3. Identify action needed to correct violations and weaknesses in the institution's compliance system.
4. Discuss findings with the institution's management and obtain a commitment for corrective action.

References

Statute: Home Mortgage Disclosure Act
www.fdic.gov/regulations/laws/rules/6500-3030.html#6500hmda1975

Many of the following reference links can be found at the FFIEC HMDA website at **www.ffiec.gov/hmda**

Regulation C:
- *Regulation effective for data collected thru 2003*
  www.ffiec.gov/hmda/pdf/regulationc.pdf
- *Commentary effective for data collected through 2003*
  www.ffiec.gov/hmda/pdf/commentary.pdf
- *Regulation effective on January 1, 2004*
  www.ffiec.gov/hmda/pdf/regulationc2004.pdf
- *Commentary effective on January 1, 2004*
  www.ffiec.gov/hmda/pdf/regc_staff2004.pdf

Transition rules for HMDA 2004:
www.ffiec.gov/hmda/pdf/transitionrules.pdf

Special limited exception for new 2004 reporters in new MSAs:
www.ffiec.gov/hmda/geocode.htm

Census Products
- *Census Data; Counties Located in Non-Metro Area Listing; and HUD estimated Metropolitan Area Median Family Income Listing*

www.ffiec.gov/hmda/censusproducts.htm

History of 2002 Amendments to Reg C and Commentary:
- *Amendments—published February 2002*
  www.ffiec.gov/hmda/pdf/regc_020702.pdf
- *Delay of effective date—published May 2002*
  www.ffiec.gov/hmda/pdf/regc_050202.pdf
- *Further amendments—published June 2002*
  www.ffiec.gov/hmda/pdf/regc_062102.pdf

- *Amendments effective January 1, 2003—published June 2002*
  www.ffiec.gov/hmda/pdf/regctech_062102.pdf

Consideration and Calculation of Civil Money Penalties (FIAP) Manual:
http://fdic01/division/dsc/rm/fiap_manual/chap10-civil%20money%20penaltied.pdf

Financial Institution Letters:
- Pending FIL re 2002-2005 changes, to be issued shortly.

Job Aids

FFIEC HMDA Site—Interagency aspects of HMDA:
www.ffiec.gov/hmda

A Guide to HMDA Reporting: Getting It Right!
A summary of requirements and instructions for reporting HMDA data. The 2004 version will be available on the HMDA web site by January 1, 2004, and will be mailed to HMDA reporting institutions shortly thereafter.
www.ffiec.gov/hmda/guide.htm

HMDA Data Entry Software:
Designed by the FRB on behalf of the FFIEC, the HMDA Data Entry Software assists respondents in automating the filing of their HMDA data. Provided free of charge to HMDA lenders, the software includes editing features to help verify and analyze the accuracy of the data. The current version is available only by download at the FFIEC HMDA web site.
www.ffiec.gov/hmda/softinfo.htm

Rate Spread Calculator:
www.ffiec.gov/ratespread/default.aspx

Data Submission:
Encrypted HMDA data should be emailed annually by March 1st to: **hmdasub@frb.gov**

HMDA 2004: Revisions to Reg C—A Training Presentation in various formats:
www.ffiec.gov/hmda/powerpoint.htm

FFIEC Geocoding System:
Allows the user to retrieve Metropolitan Area (MA), State, County, and Census Tract codes for street addresses.
www.ffiec.gov/geocode/default.htm
To read more about the FFIEC Geocoding/Mapping System, go to **www.ffiec.gov/geocode/help_1.htm**

Disclosure Statements:
Annually each July, the FFIEC mails a complimentary copy of the FFIEC HMDA Aggregate & Disclosure CD-ROM that contains ALL HMDA reporters' individual Disclosure Statements. Institutions may access and print a copy of their Disclosure Statement from this CD-ROM or from the FFIEC's web site.
http://www.ffiec.gov/hmdaadwebreport/DisWelcome.aspx

National Aggregate Reposts:
http://www.ffiec.gov/hmdaadwebreport/NatAggWelcome.aspx

Aggregate Reports by state, MSA:
http://www.ffiec.gov/hmdaadwebreport/Agg/Welcome.aspx

Sampling Guidelines for Compliance and CRA:
www.fdic.gov/regulations/compliance/manual/appendix/app-h.pdf

CRA Wiz/MAPPS:
fdic01/division/dsc/cra/CRAWiz/index.html

Census Information:
www.ffiec.gov/webcensus/ffieccensus.htm

HMDA Glossary:
www.ffiec.gov/hmda/glossary.htm

CRA/HMDA Reporter Newsletter:
Annual on-line publication that provides information on various topics to assist in the collection and reporting of CRA and HMDA data, informing readers of new developments and changes, as well as answering commonly asked questions.
www.ffiec.gov/hmda/newsletter.htm

HMDA Reporting Questions and Answers:
www.ffiec.gov/hmda/faq.htm

- *HMDA Processing*
  www.ffiec.gov/hmda/faqtech.htm#processing
- *HMDA Data Entry Software*
  www.ffiec.gov/hmda/faqtech.htm#data
- *HMDA Public Data*
  www.ffiec.gov/hmda/faqtech.htm#public
- *Geocoding*
  www.ffiec.gov/hmda/faqtech.htm#geocoding
- *Property Type*
  www.ffiec.gov/hmda/faqreg.htm#property
- *Action Taken*
  www.ffiec.gov/hmda/faqreg.htm#action
- *Loan Purpose*
  www.ffiec.gov/hmda/faqreg.htm#purpose
- *Pre-approvals*
  www.ffiec.gov/hmda/faqreg.htm#preapprovals
- *Sex, Race & Ethnicity – General*
  www.ffiec.gov/hmda/faqreg.htm#general
- *Sex, Race & Ethnicity – Transition Guidance*
  www.ffiec.gov/hmda/faqreg.htm#transition
- *Rate Spread*
  www.ffiec.gov/hmda/faqreg.htm#rate
- *Purchaser*
  www.ffiec.gov/hmda/faqreg.htm#purchaser
- *Temporary Financing*
  www.ffiec.gov/hmda/faqreg.htm#temporaryfinancing

Examination Checklist—Applicability	Yes	No
Depository Institutions		
1. Is the depository institution a bank, savings association, or credit union that originated in the preceding calendar year at least one home purchase loan (or refinancing of a home purchase loan) secured by a first lien on a one-to-four family dwelling? (§203.2(e)(1)(iii))		
2. Does the depository institution meet at least one of the criteria below?		
a. The depository institution is a federally insured or regulated institution (§203.2(e)(1)(iv)(A));		
b. The depository institution originated a mortgage loan (reference checklist question #1) that was insured, guaranteed, or supplemented by a federal agency (§203.2(e)(1)(iv)(B)); or		
c. The depository institution originated a mortgage loan (reference checklist question #1) intending to sell it to Fannie Mae or Freddie Mac (§203.2(e)(1)(iv)(C)).		
3. Did the depository institution have either a home or branch office in an MSA on December 31 of the preceding calendar year? (§203.2(e)(1)(ii))		
4. On the preceding December 31 did the depository institution have assets in excess of the asset threshold that is adjusted annually and published annually by the Federal Reserve Board? (§203.2(e)(1)(i))		
If the answers to Applicability/Depository Innstitutions *bullets 1 through 4 are "Yes", then the depository institution is subject to the requirements of HMDA and Regulation C, and the examiner should complete the remaining portion of the checklist.*		
Non-Depository Institutions		
5. Is the depository institution a majority owner of a for-profit mortgage subsidiary? If the answer to question #5 is "Yes," then complete questions #6 through #8; otherwise proceed to question #9.		
6. In the preceding calendar year, did the mortgage subsidiary either:		
a. Originate home purchase loans, including or refinancings of home purchase loans, that equaled at least 10 percent of its total loan-origination volume, measured in dollars? (§203.2(e)(2)(i)(A)) or,		
b. Originate home purchase loans, including or refinancings of home purchase loans, that equaled at least $25 million? (§203.2(e)(2)(i)(B))		
7. Did the mortgage subsidiary have a home or branch office5 in an MSA as of December 31 of the previous year? (§203.2(e)(2)(ii)) and,		
8. Does the mortgage subsidiary meet at least one of the criteria below? (§203.2(e)(2)(iii))		
a. The mortgage subsidiary had total assets (when combined with the assets of the parent corporation) exceeding $10 million on the previous December 31, or		
b. The mortgage subsidiary originated at least 100 home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.		
If the answers to Applicability/Non-Depository Innstitutions *bullets 6 through 8 are "Yes," then the mortgage subsidiary is subject to the requirements of HMDA and Regulation C. If the depository institution that has a majority interest in the mortgage subsidiary is also subject to HMDA and*		

	Yes	No
Regulation C, then the examiner should complete a separate checklist for each entity beginning with question #9 for the mortgage subsidiary. If the depository institution that has a majority interest in the mortgage subsidiary is not subject to Regulation C and HMDA, the examiner should use the remaining portion of this checklist for the mortgage subsidiary. The examiner should note to which financial institution the remaining checklist questions apply.		
Compilation of Loan Data		
9. Does the financial institution collect the following data in accordance with §203.4(a) and Appendix A?		
a. An identifying number (that does not include the applicant's name or social security number) for the loan or loan application, and the date the application was received? (§203.4(a)(1))		
b. The type of the loan or application? (§203.4(a)(2))		
c. The purpose of the loan or application? (§203.4(a)(3))		
d. Whether the application is for a pre-approval and whether it resulted in a denial or an origination. (§203.4(a)(4))		
e. The property type to which the loan or application relates? (§203.4(a)(5))		
f. The owner-occupancy status of the property to which the loan or application relates? (§203.4(a)(6))		
g. The loan amount or the amount requested on the application? (§203.4(a)(7))		
h. The type of action taken? (§203.4(a)(8))		
i. The date such action was taken? (§203.4(a)(8))		
j. The location of the property to which the loan or application relates by (§203.4(a)(9)):		
i. MSA or MD number (5 digits)?		
ii. State – (2 digits) numeric code?		
iii. County – (3 digits) numeric code?		
iv. Census tract number (6 digits)?		
k. The ethnicity and race of the applicant or borrower? (§203.4(a)(10))		
l. The ethnicity and race of the co-applicant or co-borrower? (§203.4(a)(10))		
m. The sex of the applicant or borrower? (§203.4(a)(10))		
n. The sex of the co-applicant or co-borrower? (§203.4(a)(10))		
o. The gross annual income relied on in processing the applicant's request? (§203.4(a)(10)) *Note: Collection of data concerning ethnicity, and race, and sex is mandatory for all transactions unless the financial institution purchased the loans or the borrower is not a natural person (a corporation or partnership). Data on annual income is mandatory for all transactions*		

	Yes	No
unless the financial institution purchased the loan, the borrower is not a natural person, one of the exceptions for ethnicity, race, and sex applies, or unless the loan is for a multifamily dwelling, income was not relied upon in the credit decision, or the loan is to an employee.		
p. The type of entity purchasing a loan that the financial institution originates or purchases and then sells within the same calendar year? (§203.4(a)(11))		
q. For originated loans subject to Regulation Z, the difference between the loan's APR and the yield on Treasury securities having a comparable maturity period for originated loans subject to Regulation Z, if the APR is equal to or exceeds the yield on the Treasury security with a comparable maturity period or exceeds it by 3 percentage points for first lien loans and 5 percentage points for subordinate lien loans. (§203.4(a)(12))		
r. Whether the loan is subject to the HOEPA? (§203.4(a)(13))		
s. The lien status of the loan or application? (§203.4(a)(14))		
t. Does the financial institution provide the reasons for denial of an application? (§203.4(c)(1)) If yes, are the reasons accurate?		
u. Is the HMDA-LAR updated within 30 calendar days after the end of the quarter in which final action is taken? (§203.4(a))		
10. Does the institution request ethnicity, race, and sex data for all telephone, mail and Internet applications in accordance with Appendix B? (§203.4(b)(1))		
11. For applications taken face-to-face, does the financial institution note data concerning ethnicity, race, and sex on the basis of visual observation or surname if the applicant chooses not to provide this information? (§203.4(b)(1)) *Note: If the applicant fails to provide this information in mail, telephone, or Internet applications, the ethnicity, race and sex are not recorded; instead, an applicable code number is provided (ethnicity 3, race 6, and sex 3; NA should not be used for these three situations).*		
Disclosure and Reporting		
12. Is the loan or applicant data presented in the format prescribed in Appendix A of the regulation? (§203.4(a))		
13. Has the institution reported all applications for, and originations of and purchases of home-purchase loans, home-improvement loans, and refinancings? (§203.4(a))		
14. Has the financial institution refrained from reporting: (§203.4(d))		
a. Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee)?		
b. Loans on unimproved land?		

	Yes	No
c. Temporary financing (such as a bridge or construction loan)?		
d. Purchase of an interest in a pool of loans (such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits)?		
e. Purchase solely of the right to service loans?		
f. Loans acquired as part of a merger or acquisition or as part of the acquisition of all assets and liabilities of a branch office?		
g. A refinancing if, under the loan agreement, the financial institution is unconditionally obligated to refinance the obligation, or is obligated to refinance the obligation subject to conditions under the borrower's control? (Appendix, I.A.5a)		
15. Did the financial institution submit its completed HMDA-LAR to the appropriate supervisory agency in automated machine-readable format by March 1 following the calendar year for which the data are compiled? (§203.5(a)) *Note: Financial institutions that report twenty-five or fewer entries on their HMDA-LAR may collect and report their HMDA data in a paper form. Any financial institution opting to submit its data in such a manner must send two copies that are typed or computer printed. The institutiony must use the format of the HMDA-LAR, but need not use the form itself.*		
16. Has an officer of the financial institution signed the HMDA-LAR transmittal sheet certifying the accuracy of the data contained in the register? (Appendix A)		
17. Is the transmittal sheet accurately completed? (Appendix A)		
18. Has the financial institution maintained its HMDA-LAR in its records for at least three years? (§203.5(a))		
19. Has the financial institution made its FFIEC prepared disclosure statement:		
a. Available to the public at its home office no later than three business days after receiving it from the FFIEC? AND		
b. Available within ten business days in at least one branch office in each additional MSA or MD where the financial institution has offices; or posted the address for sending written requests in the lobby of each branch office in other MSAs or MDs where the institution has offices and delivered a copy of the disclosure statement within fifteen calendar days of receiving a written request? (§203.5(b))		
20. Has the financial institution made its modified HMDA-LAR (loan application number, date application received, and date action taken excluded from the data) for the preceding calendar year available to the public, by March 31 for requests received on or before March 1, and within 30 days for requests received after March 1? (§203.5(c))		
21. Has the financial institution maintained its modified HMDA-LAR for three years? Does the financial institution have policies and procedures to ensure its modified HMDA-LAR is available to the public during that term? (§203.5(d))		
22. Has the financial institution maintained its disclosure statement for 5 years? (§203.5(d))		

	Yes	No
23. Does the financial institution have policies and procedures to ensure its disclosure statement is available to the public during that term? (§203.5(d))		
24. Does the financial institution make available the modified HMDA-LAR and disclosure statement for inspection and copying during the hours the office is normally open to the public for business? If it imposes a fee for costs incurred in providing or reproducing the data, is it reasonable? (§203.5(d))		
25. Has the financial institution posted a general notice about the availability of its disclosure statement in the lobby of its home office and in each branch office located in an MSAa metropolitan area? (§203.5(e))		
26. Does the institution provide promptly, upon request, the location of the institution's offices where the statement is available for inspection and copying, or include the location in the lobby notice? (§203.5(e))		
27. Did errors occur in the previous reporting period? (Review the financial institution's last disclosure statement, HMDA-LAR, modified HMDA-LAR, and any applicable correspondence from the regulatory agency, such as notices of noncompliance.)		
28. If errors did occur, has the financial institution taken appropriate steps to correct and prevent such errors in the future?		
a. Have individuals who are responsible for all data-entry:		
i. Received appropriate training in the completion of the HMDA-LAR?		
ii. Been provided copies of Regulation C, including the instructions for completion of the HMDA-LAR, and the "A Guide to HMDA Reporting, Getting it Right!?"		
iii. Know whom to contact, at the financial institution or their the institution's supervisory agency, if they have questions not answered by the written materials?		
b. Are the financial institution's loan officers (including loan officers in the commercial loan department who may handle loan applications for HMDA reportable loans (such as multi-family or mixed-use properties and small business refinances secured by residential real estate):		
i. Informed of the reporting requirements so they can assemble the necessary information, and do they understand the importance of accuracy?		
ii. Familiar with the disclosure statements that are produced from the data and cognizant of the ramifications for the financial institution if the data are wrong?		
iii. Maintain appropriate documentation of the information entered on the HMDA-LAR?		
c. If data are collected at more than one branch, are the appropriate personnel sufficiently trained to ensure that all branches are reporting data using the same guidelines?		
d. Does the financial institution have internal control processes to ensure that the persons who capture and code the data are doing so accurately and consistently?		
e. Does the financial institution have controls established to ensure separation of duties (e.g. data entry, review, oversight approval, etc.)?		

(This page intentionally left blank.)

Consumer Leasing[1]

Introduction

For consumers, leasing is an alternative to buying either with cash or on credit. A lease is a contract between a lessor (the property owner) and a lessee (the property user) for the use of property subject to stated terms and limitations for a specified period and at a specified payment.

The Consumer Leasing Act (15 USC 1667 et. seq.) (CLA) was passed in 1976 to assure that meaningful and accurate disclosure of lease terms is provided to consumers before entering into a contract. It applies to consumer leases of personal property. With this information, consumers can more easily compare one lease with another, as well as compare the cost of leasing with the cost of buying on credit or the opportunity cost of paying cash. In addition, the CLA puts limits on balloon payments sometimes due at the end of a lease, and regulates advertising.

Originally, the CLA was part of the Truth in Lending Act, and was implemented by Regulation Z. When Regulation Z was revised in 1981, Regulation M was issued, and contained those provisions that govern consumer leases.

Today a relatively small number of banks engage in consumer leasing. The trend seems to be for leasing to be carried out through specialized bank subsidiaries, vehicle finance companies, other finance companies, or directly by retailers.

Key Definitions

"Lessee"—A lessee is a natural person who enters in to or is offered a consumer lease.

"Lessor"—A lessor is a natural person or organization who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who leases or offers to lease more than five times in the preceding or current calendar year meets this definition.

"Consumer Lease"—A consumer lease is a contract between a lessor and a lessee:

- for the use of personal property by an individual (natural person),
- to be used primarily for personal, family, or household purposes,
- for a period of more than 4 months (week-to-week and month-to-month leases do not meet this criterion, even though they may be extended beyond 4 months), and
- with a total contractual cost of no more than $25,000.

Specifically excluded from coverage are leases that are:

- for business, agricultural or made to an organization or government,
- for real property,
- for personal property which are incidental to the lease of real property, subject to certain conditions, and
- for credit sales, as defined in Regulation Z. §226.2(a)(16).

A lease meeting all of these criteria is covered by the CLA and the Federal Reserve Board's Regulation M. If any one of these criteria is not met, for example, if the leased property is used primarily for business purposes or if the total contractual cost exceeds $25,000, the CLA and Regulation M do not apply.

Consumer leases fall into one of two categories: closed end and open end. Since the information required to be disclosed to the consumer will vary with the kind of lease, it is important to note the difference between them. However, to properly understand the difference, realized value and residual value must first be defined.

"Realized Value"—The realized value is the price received by the lessor of the leased property at disposition, the highest offer for disposition of the leased property, or the fair market value of the leased property at the end of the lease term.

"Residual Value"—The residual value is the value of the leased property at the end of the lease, as estimated or assigned at consummation of the lease by the lessor.

"Open-end Lease"—An open-end lease is a lease in which the amount owed at the end of the lease term is based on the difference between the residual value of the leased property and its realized value. The consumer may pay all or part of the difference if the realized value is less than the residual value or he may get a refund if the realized value is greater than the residual value at scheduled termination.

"Closed-end Lease"—A closed-end lease is a lease other than an open-end lease. This type of lease allows the consumer to "walk away" at the end of the contract period, with no further payment obligation—unless the property has been damaged or has sustained abnormal wear and tear.

"Gross Capitalized Cost"—The gross capitalized cost is the amount agreed upon by the lessor and lessee as the value of the leased property, plus any items that are capitalized or amortized during the lease term. These items may include taxes, insurance, service agreements, and any outstanding prior credit or lease balance.

"Capitalized Cost Reduction"—This term means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost.

[1] This section fully incorporates the examination procedures issued under DSC RD Memo 03-034: FFIEC Approved Consumer Leasing Act Examination Procedures.

"Adjusted Capitalized Cost"—This is the gross capitalized cost less the capitalized cost reduction and the amount used by the lessor in calculating the base periodic payment.

General Disclosure Requirements

Lessors are required by federal law to provide the consumer with leasing cost information and other disclosures in a format similar to the model disclosure forms found in Appendix A to the regulation. Certain pieces of this information must be kept together and must be segregated from other lease information. All of the information stated must be accurate, clear and conspicuous, and provided in writing in a form that the consumer may keep.[2] Additionally, in accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) and Section 6 of the regulation, a lessor may provide by electronic communication any disclosure required by this part to be in writing. Disclosures are to be provided in the following circumstances.

Prior to or Due at Lease Signing

A dated disclosure must be given to the consumer before signing the lease and must contain all of the information detailed in Section 4 of the regulation.

Renegotiations and Extensions

New disclosures also must be provided when a consumer renegotiates, or extends a lease, subject to certain exceptions.

Multiple Lessors/Lessees

In the event of multiple lessors, one lessor on behalf of all the lessors may make the required disclosures. If the lease involves more than one lessee, the required disclosures should be given to any lessee who is primarily liable.

Advertising

Advertisements concerning consumer leases must also comply with certain disclosure requirements. All advertisements must be accurate. If a printed ad includes any reference to certain "trigger terms"—the amount of any payment, statement of a capitalized cost reduction (i.e., down payment), or other payment required prior to or at lease signing or delivery, or that no such payment is required — then the ad must also state the following:

- that the transaction is for a lease
- the total amount due prior to or at lease signing or delivery
- the number, amounts and due dates or periods of the scheduled payments
- a statement of whether or not a security deposit is required.

An advertisement for an open-end lease also must include a statement that extra charges may be imposed at the end of the lease based on the difference between the residual value and the realized value at the end of the lease term.

If lessors give a percentage rate in an advertisement, the rate cannot be more prominent than any of the other required disclosures. They must also include a statement that "this percentage may not measure the overall cost of financing this lease." The lessor cannot use the term "annual percentage rate," "annual lease rate," or any equivalent term.

Some fees (license, registration, taxes, and inspection fees) may vary by state or locality. An advertisement may exclude these third-party fees from the disclosure of a periodic payment or total amount due at lease signing or delivery, provided the ad states that these have been excluded. Otherwise, an ad may include these fees in the periodic payment or total amount due, provided it states that the fees are based on a particular state or locality and indicates that the fees may vary.

Limits on Balloon Payments

In order to limit balloon payments that may be required of the consumer, certain sections of the regulation call for reasonable calculations and estimates. These provisions protect the consumer at early termination of a lease, at the end of the lease term, or in delinquency, default, or late payment status. The provisions limit the lessee's liability at the end of the lease term and set reasonableness standards for wear and use charges, early termination charges, and penalties or fees for delinquency.

Penalties and Liability

Criminal and civil liability provisions of the Truth in Lending Act also apply to the CLA. Actions alleging failure to disclose the required information, or otherwise comply with the CLA, must be brought within one year of the termination of the lease agreement.

Record Retention

Lessors are required to maintain evidence of compliance with the requirements imposed by Regulation M, other than the advertising requirements under Section 7 of the regulation, for a period of not less than two years after the date of the disclosures are required to be made or an action is required to be taken.

Examination Objectives

1. To assess the quality of the institution's compliance management system for the Consumer Leasing Act.
2. To determine that lessees of personal property are given meaningful and accurate disclosures of lease terms.

[2] The provisions to provide disclosures electronically are currently not mandatory. (7/2002)

3. To determine if the limits of liability are clearly indicated to the lessees and correctly enforced by the institution.
4. To ensure that the financial institution provides accurate disclosures of its leasing terms in all advertising.

Examination Procedures

General Disclosure Requirements

A. Review the institution's procedures for providing disclosures to ensure that there are adequate controls and procedures to effect compliance.

B. Review the disclosures provided by the institution.

1. Are the disclosures clear and conspicuous and provided in writing in a form the consumer may keep? Alternatively, are they provided electronically where agreed to by the consumer? (§213.3(a) & §213.3(a)(5))[3]
2. Are the disclosures given in a dated statement and in the prescribed are in the format prescribed? (§213.3(a)(1))
3. Is the information required by §213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) segregated and in a form substantially similar to the model in Appendix A? (§213.3(a)(2))
4. Are the disclosures timely? (§213.3(a)(3))
5. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (§213.3 (c))
6. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (§213.3(b))
7. Are all estimates clearly identified and reasonable? (§213.3(d))
8. Are the disclosures accurate and do the disclosures contain the information required by §213.4 (a) through (t)? (§213.4)
9. Are disclosures given to lessees when they "renegotiate" or "extend" their leases? (§213.5)

Lessee Liability

A. Review the lease estimates and calculations to ensure that there is not any unreasonable balloon payment expected of the lessee in the following circumstances:

- at early termination,
  1. Does the lessor disclose the conditions under which the lease may be terminated early and the amount and method of determining the amount of any early termination charges? (§213. 4(g)(1)
  2. Are any early termination charges reasonable? (§213. 4(g)(1), 4(q))
- at end of lease term, for wear and use,
  1. If the lessor sets standards for wear and use of the leased vehicle are the amounts or method of determining any charge for excess mileage disclosed? (§213. 4(h)(3))
  2. Are standards for wear and use reasonable? (§213. 4(h)(2))
- at end of lease term (for open-end leases), and
  1. Does the lessor disclose the limitations on the lessee's liabilities at the end of the lease term? (§213.4(m)(2))
  2. Are the lessee and lessor permitted to make a mutually agreeable final adjustment regarding excess liability? (§213.4(m)(3))
- in delinquency, default or late payment.
  1. Does the lessor disclose penalties or other charges for delinquency, default or late payments? (§213. 4(q))
  2. Are the penalties or other charges reasonable? (§213. 4(q))

Advertising

A. Review advertising policies and procedures used by the institution to ensure that there are adequate controls and procedures to effect compliance.

B. Review a sample of the institution's advertisements.

1. Do the advertisements advertise terms that are usually and customarily available? (§213.7(a))
2. Are the disclosures contained in the advertisements clear and conspicuous? (§213.7(b))
3. Do catalog/multiple page advertisements comply with the page reference requirements? (§213.7(c))
4. When triggering terms are used, do the advertisements contain the additional required information? (§213.7(d))
5. Do merchandise tags which use triggering terms refer to a sign or display that contains the additional required disclosures? (§213.7(e))
6. If television or radio advertisements use triggering terms, if they do not contain the additional terms do not include the additional terms required by §7(d)(2) when triggering terms are used, do they use alternative disclosure methods (direct consumers to a toll free number or written advertisement)? (§213.7(f))

Miscellaneous

A. Are records and other evidence of compliance retained for a period of no less than two years? (§213.8)

[3] The provisions to provide disclosures electronically are currently not mandatory. (7/2002)

References

12 CFR 213 - Regulation M—Consumer Leasing (FRB's regulation and official staff commentary)
www.fdic.gov/regulations/laws/rules/6500-2000.html

Consumer Credit Protection Act: Title 1, Chapter 5—Consumer Leases
www.fdic.gov/regulations/laws/rules/6500.60.html

Applicable Financial Institution Letters (FIL)

FIL 66-2001: Electronic Delivery of Consumer Protection Disclosures
www.fdic.gov/news/news/financial/2001/fil0166.html

FIL 40-2001: Electronic Delivery of Consumer Protection Disclosures
www.fdic.gov/news/news/financial/2001/fil0140.html

FIL 35-99: Consumer Leasing Act and Truth in Lending Act
www.fdic.gov/news/news/financial/1999/fil9935.html

FIL 114-98: Electronic Funds Transfer Act, Consumer Leasing Act and Truth in Savings Act
www.fdic.gov/news/news/financial/1998/fil98114.html

FIL 36-97: Consumer Leasing Act
www.fdic.gov/news/news/financial/1997/fil9736.html

Job Aids

FTC Publication - Advertising Consumer Leases—dated August, 2000.
www.ftc.gov/bcd/conline/pubs/buspubs/adlease.htm

Examination Checklist – Consumer Leasing		
	Yes	No
1. Does the Bank engage in consumer leasing or purchase consumer leases from lessors? (§213.2(h)) **(If no, there is no need to do further work on Consumer Leasing. If yes, complete the following checklist, answering yes (Y) or no (N) for each item.)**		
2. Are the disclosures made prior to consummation of the lease, that is, at the time a binding order is made or the lease is signed? (§213.3(a)(3))		
3. Are the disclosures clear and conspicuous and provided in writing in a form the consumer may keep? (§213.3(a))		
4. Are the disclosures given in a dated statement and (i) made either in a separate statement that identifies the consumer lease transaction, (ii) in the contract or (iii) other document evidencing the lease? (§213.3(a)(1))		
5. Is the information required by §213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) segregated and in a form substantially similar to the model in Appendix A? (§213.3(a)(2))		
6. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (§213.3(c))		
7. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (§213.3(b))		
8. Are disclosures provided to at least one lessee where there are multiple lessees and by at least one lessor when there are multiple lessors? (§213.3(c))		
9. Are all estimates clearly identified and reasonable? (§213.3(d))		
10. Are the following disclosures made in the lease?		
A. Description of property (§213.4(a))		
B. Amount due at lease signing or delivery (§213.4(b))		
C. Payment schedule and total amount of periodic payments (§213.4(c))		
D. Other charges(§213.4(d))		
E. Total of payments(§213.4(e))		
F. Regarding payment calculations:		
i. Gross capitalized cost (§213.4(f)(1)))		

	Yes	No
ii. Capitalized cost reduction (§213.4(f)(2)		
iii. Adjusted capitalized cost (§213.4(f)(3))		
iv. Residual value (§213.4(f)(4))		
v. Depreciation and any amortized amounts (§213.4(f)(5))		
vi. Rent charge (§213.4(f)(6))		
vii. Total of base periodic payments (§213.4(f)(7))		
viii. Lease payments (§213.4(f)(8))		
ix. Basic periodic payment (§213.4(f)(9))		
x. Itemization of other charges (§213.4(f)(10))		
xi. Total periodic payment (§213.4(f)(11))		
G. Regarding early termination:		
i. Conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term (§213.4(g)(1))		
ii. The amount or description of the method for determining the amount of any penalty or other charges for early termination (§213.4(g)(1))		
iii. In a form substantially similar to the sample (§213.4(g)(2)		
H. Regarding notice of wear and use:		
i. A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, with a description of the responsibility (§213.4(h)(1))		
ii. A statement of the lessor's standards for wear and use, which must be reasonable (§213.4(h)(2))		
iii. In a form substantially similar to the sample (§213.4(h)(3))		
I. Purchase option (§213.4(i))		
J. Statement referencing other nonsegregated disclosures (§213.4(j))		
K. Liability between residual and realized values (§213.4(k))		
L. Right of appraisal (§213.4(l))		
M. For open-end leases:		
i. the rent and other charges paid by lessee (§213.4(m)(1))		
ii. liability at end of lease term based on residual value and any excess liability (§213.4(m) and (m)(2))		
iii. mutually agreeable final adjustment (§213.4(m)(3))		

	Yes	No
N. Fees and taxes (§213.4(n))		
O. Regarding insurance:		
i. Are the types and amounts of insurance that the lessee is required to have disclosed?(§213.4(o))		
ii. If the lessor provides insurance, are the types, amounts, and cost also disclosed? (§213.4(o)(1))		
P. Warranties or guarantees (§213.4 (p))		
Q. Penalties and other charges for late payments, delinquency, or default (§213.4(q))		
R. Security interest other than a security deposit (§213.4(r))		
S. Regarding any information on rate:		
i. Does the lessor use the term "annual percentage rate," "annual lease rate," or any equivalent term in the lease disclosure?(§213.4(s))		
ii. If so, does a statement that "this percent may not measure the overall cost of financing this lease" accompany the rate? I (§213.4(s))		
12. Are disclosures given to lessees when they "renegotiate" or "extend" their leases? (§213.5)		
13. If the institution provides disclosures via electronic communication does it do the following: (§213.6(b))		
A. Obtain a consumer's affirmative consent when providing disclosures related to a transaction? (§213.6(c))		
B. Provide disclosures either by: (§213.6(d))		
i. Sending to consumer's electronic address? (§213.6(d)(1)) OR		
ii. Making the disclosures available at another location (such as a website)? (§213.6(d)(2))		
C. If making the disclosure available at another location, does the institution: (§213.6(d)(2))		
i. Alert the consumer of the availability of disclosures by sending a notice to their electronic address or postal address? (§213.6(d)(2)(i))		
ii. Reference the account involved (if applicable) and the address of location where the disclosure is available? (§213.6(d)(2)(ii)) AND		
iii. Is the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date the notice alerting the consumer of the disclosure, whichever comes later? ((§213.6(d)(2)(ii))		
D. If the electronic communication is returned, takes reasonable steps to attempt redelivery of disclosures returned undelivered? (§213.6(e))		

	Yes	No
14. Does the bank advertise its leasing program? If so,		
A. Do the advertisements advertise terms that are usually and customarily available? (§213.7(a))		
B. Are the advertisements clear and conspicuous? §213.7(b))		
i. Are any affirmative or negative references to a charge that is part of the disclosure required under paragraph (d)(2)(ii) less prominent than the disclosure (except for the statement of a periodic payment? (§213.7(b)(1))		
ii. Are the advertisements of lease rates less prominent than any disclosure required by section 4 (except the notice of the limitations on rate)? (§213.7(b)(2))		
C. Do catalog and multiple page advertisements comply with the page reference requirements? (§213.7(c))		
D. If any triggering terms are used, are all the following disclosures made? (§213.7(d)(2))		
i. That the transaction advertised is a lease		
ii. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation		
iii. The number, amounts, and due dates or periods of scheduled payments under the lease		
iv. A statement of whether or not a security deposit is required		
v. A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.		
15. Do merchandise tags which use triggering terms refer to a sign or display that contains the additional required disclosures (§213.7(e))		
16. Do television or radio advertisements that do not contain the additional information required by section 4(d)(2) direct consumers to a toll-free number or written advertisement for additional information when triggering terms are used? (§213.7)		
A. Is the toll free number listed along with a reference that the number may be used by a consumer to obtain the information? (§213.7(f)(1)(i))		
B. Does the written advertisement that is in general circulation in the community served by the station including the name and date of the publication, and is published beginning at least three days before and ending at least ten days after broadcast? (§213.7(f)(1)(ii))		
C. Has the toll-free telephone number been available for no fewer than ten days, beginning on the date of broadcast? (§213.7(f)(2)(i))		
D. Does the lessor provide the information required by paragraph (d)(2) over the toll-free number, orally or in writing upon request? (§213.7(f)(2)(ii))		
17. Are records and other evidence of compliance retained for a period of no less than two (2) years as required by the CLA? (§213.8)		

VI. Compliance Depository Issues

Contents

Expedited Funds Availability Act **VI-1.1**

Introduction VI-1.1
Subpart A – General Definitions VI-1.1
Subpart B –Availability of Funds And Disclosure of Funds Availability Policies VI-1.2
Availability Schedule – §229.12 VI-1.3
Exceptions – §229.13 VI-1.6
Payment of Interest – §229.14 VI-1.8
General Disclosure Requirements – §229.15 VI-1.8
Specific Availability Policy Disclosure – §229.16 VI-1.9
Initial Disclosures – §229.17 VI-1.10
Additional Disclosure Requirements – §229.18 VI-1.10
Miscellaneous – §229.19 VI-1.10
Relation to State Law – §229.20 VI-1.12
Civil Liability – §229.21 VI-1.12
Subpart C – Collection of Checks VI-1.13
Subpart D – Substitute Checks VI-1.13
Expedited Recredit for Banks – §229.55 VI-1.15
Liability – §229.56 VI-1.15
Consumer Awareness – §229.57 VI-1.15
Mode of Delivery of Information – §229.58 VI-1.16
Examination Objectives – Part I VI-1.16
Subparts A and B VI-1.16
Examination Procedures VI-1.16
Extended Holds VI-1.18
Miscellaneous Provisions VI-1.19
Examination Objectives – Part II VI-1.20
Subpart D VI-1.20
Examination Procedures VI-1.20
General VI-1.21
Consumer Awareness – §229.57 VI-1.21
Expedited Recredit for Consumers – §229.54 VI-1.22
References VI-1.23
Job Aids VI-1.23

Electronic Fund Transfer Act **VI–2.31**

Introduction VI–2.31
Exemptions – §205.3(c) VI–2.31
Special Requirements – §205.4 VI–2.31
Issuance of Access Devices – §205.5 VI–2.31
Liability of Consumers for UnauthorizedTransfers – §205.6 VI–2.32
Consumer Liability for Unauthorized Transfers:Electronic Fund Transfer Act–Regulation E (12 CFR 205.6) VI–2.33
Initial Disclosure of Terms and Conditions – §205.7 VI–2.34
Change in Terms; Error Resolution Notice – §205.8 VI–2.34
Documentation of Transfers – §205.9 VI–2.34

Preauthorized Transfers – §205.10 VI–2.35
Procedures for Resolving Errors – §205.11 VI–2.36
Relation to State Law – §205.12 VI–2.37
Administrative Enforcement – §205.13 and §917 VI–2.37
Services Offered by Provider Not Holding Consumer's Account – §205.14 VI–2.37
Electronic Fund Transfer of Government Benefits – §205.15 VI–2.38
Disclosures at Automated Teller Machines - §205.16 VI–2.38
Requirements for Electronic Communications - §205.17 VI–2.38
Suspension of Obligations – §912;Waiver of Rights – §914 VI–2.38
Liability of Financial Institutions – §910; Civil Liability – §915; Criminal Liability – §916 VI–2.39
Examination Objectives VI–2.39
Examination Procedures VI–2.39
References VI–2.48

Truth in Savings Act VI-3.1

Introduction VI-3.1
Regulation Overview VI-3.1
Definitions VI-3.1
Examination Objectives VI-3.1
Examination Procedures VI-3.2
Transaction-Related Procedures VI-3.2
Notice of Change in Terms and Notice Before Maturity VI-3.2
Periodic Statement Disclosures VI-3.2
Payment of Interest VI-3.3
Electronic Communication VI-3.3
Enforcement Actions VI-3.3
Record Retention VI-3.3
Job Aid VI-3.4
Prematurity Disclosures for Time Accounts VI-3.4
References VI-3.4

Interest on Deposits — Part 329 VI-4.1

Introduction VI-4.1
Regulation Overview VI-4.1
Definitions VI-4.1
Examination Objectives VI-4.2
Examination Procedures VI-4.2
Savings Accounts VI-4.4
Cash Management Services VI-4.4
Premiums VI-4.4
References VI-4.5

Expedited Funds Availability Act[1]

Introduction

The Expedited Funds Availability Act (EFA) was enacted in August 1987 and became effective in September 1988. The Check Clearing for the 21st Century Act (Check 21) was enacted October 28, 2003, with an effective date of October 28, 2004. Regulation CC (12 CFR Part 229) issued by the Board of Governors of the Federal Reserve System implements EFA in Subparts A through C and Check 21 in Subpart D. Regulation CC sets forth the requirements that depository institutions make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. The regulation also establishes rules designed to speed the collection and return of unpaid checks. The Check 21 section of the regulation describes requirements that affect banks that create or receive substitute checks, including consumer disclosures and expedited recredit procedures.

Regulation CC contains four subparts:

- Subpart A – Defines terms and provides for administrative enforcement.
- Subpart B – Specifies availability schedules or time frames within which banks must make funds available for withdrawal. It also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest.
- Subpart C – Sets forth rules concerning the expeditious return of checks, the responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check-endorsement standards, and other related changes to the check collection system.
- Subpart D – Contains provisions concerning requirements a substitute check must meet to be the legal equivalent of an original check; bank duties, warranties, and indemnities associated with substitute checks; expedited recredit procedures for consumers and banks; and consumer disclosures regarding substitute checks.

The Appendices to the regulation provide additional information:

- Appendices A and B – Routing number guides.
- Appendix C – Model forms and clauses that banks may use to meet their disclosure responsibilities under the regulation.
- Appendix D – Standards on how a bank shall indorse a check.

Subpart A – General Definitions

"Account" For purposes of subparts B and C is a "deposit" as defined in 12 CFR 204.2(a)(1)(i) that is a "transaction account" as defined in 12 CFR 204.2(e) (12 CFR 204 is the Federal Reserve Board's Regulation D). It encompasses consumer and corporate accounts and includes accounts from which the account holder is permitted to make transfers or withdrawals by:

- Negotiable instrument;
- Payment order of withdrawal;
- Telephone transfer; or
- Electronic payment.

However, for the purpose of subpart B, "account" does not include accounts where the account holder is a bank or a foreign bank, or where the account holder is the Treasury of the United States.

For the purpose of subpart D, "account" means any deposit at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit. Many deposits that are not accounts for purposes of the other subparts of Regulation CC, such as savings deposits, are accounts for purposes of subpart D.

"Bank" All banks, mutual savings banks, savings banks and savings associations that are insured by the FDIC, and federally-insured credit unions. "Bank" also refers to non-federally insured banks, credit unions and thrifts, as well as agencies and branches of foreign banks and Federal Home Loan Bank (FHLB) members. For purposes of subparts C and D, "bank" also includes any person engaged in the business of banking, Federal Reserve Banks, FHLBs, and state/local governments to the extent that the government unit pays checks. For purposes of subpart D only, "bank" also refers to the U.S. Treasury and the United States Postal Service (USPS) to the extent that they act as payors.

- "**Paying Bank"** Any bank at which or through which a check is payable and to which it is sent for payment or collection. For purposes of subpart D, "paying bank" also includes the U.S. Treasury and USPS. The term "paying bank" also includes the Federal Reserve Banks, FHLBs, state/local governments, and, if a check is not payable by a bank, the bank through which a check is payable.
- "**Reconverting Bank"** The bank that creates a substitute check or is the first bank to transfer or present a substitute check to another party.

"Business Day" and "**Banking Day"** are defined as follows –

1 This section fully incorporates the examination procedures issued under DSC RD Memo 04-049: Expedited Funds Availability Act/Regulation CC Examination Procedures.

- **"Business Day"** Any day excluding Saturdays, Sundays and legal holidays (standard Federal Reserve holiday schedule).
- **"Banking Day"** A business day in which a bank is open for substantially all of its banking activities.

Even though a bank may be open for regular business on a Saturday or Sunday, it is not a banking day for the purpose of Regulation CC because Saturday and Sunday are never a 'business day' under the regulation. The fact that one branch is open to the public for substantially all of its banking activities does not necessarily mean that day is a banking day for other branches.

"Check" Includes both original checks and substitute checks.[2]

- **"Original Check"** The first paper check issued with respect to a particular payment transaction.
- **"Substitute Check"** A paper reproduction of an original check that:
  - Contains an image of the front and back of the original check;
  - Bears an MICR line containing all of the information encoded on the original check's MICR line, except as provided in the industry standard for substitute checks; [3]
  - Conforms in dimension, paper stock, and otherwise with industry standards for substitute checks; and
  - Is suitable for automated processing in the same manner as the original check.
    A substitute check for which a bank has provided the warranties described in §229.52 is the legal equivalent of an original check if the substitute check accurately represents all of the information on the front and back of the original check and bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check."
- **"Copy"** Any paper reproduction of an original check, including a paper printout of an electronic image, a photocopy, or a substitute check. A "sufficient copy" is a copy of an original check that accurately represents all of the information on the front and back of the check at the time of truncation or is otherwise sufficient to establish the validity of a claim.

"Consumer" A natural person who draws a check on a consumer account or cashes or deposits a returned check against a consumer account.

"Consumer Account" An account used primarily for personal, family, or household purposes.

"Customer" A person who has an account with a bank.

"Local Check" A check deposited in a location of the depository bank that is located in the same Federal Reserve check processing region as the paying bank.

"Non-Local Check" is a check deposited in a different check processing region than the paying bank.

"Truncate" To remove an original check from the forward collection or return process and replace it with a substitute check or, by agreement, information relating to the original check. The truncating bank may or may not choose to provide subsequent delivery of the original check.

Administrative Enforcement – §229.3

The regulation is to be enforced for banks through Section 8 of the Federal Deposit Insurance Act (12 USC 1818) and for credit unions through the Federal Credit Union Act (12 USC 1751 et seq.). In addition, a supervisory agency may enforce compliance though any other authority conferred on it by law. The Federal Reserve Board shall enforce the requirements of the regulation for depository institutions that are not specifically committed to some other government agency.

Subpart B – Availability of Funds And Disclosure of Funds Availability Policies

Next-Day Availability – §229.10

Cash, electronic payments, and certain check deposits must generally be made available for withdrawal the business day after the banking day on which they were received. Among the covered check deposits are cashier's, certified, and teller's checks, government checks (including U.S. Treasury checks, U.S. Postal money orders, state and local government checks, checks drawn on Federal Reserve or Federal Home Loan Banks), and certain "on us" checks (checks drawn on the same bank or a branch thereof).

Generally, to qualify for next-day availability, the deposit must be:

- Made at a staffed teller station; and
- Deposited into an account held by the payee of the check.

2 The term "check" does not include checks drawn in a foreign currency or checks drawn on a bank located outside the United States.

3 Magnetic ink character recognition (MICR) line means the numbers, which may include the routing number, account number, check number, and check amount, that are printed across the bottom of a check in magnetic ink. The industry standard for substitute checks is American National Standard Specifications for an Image Replacement Document – IRD, X9.100-140. ANS X9.100-140 specifies ways in which the content of a substitute check's MICR line may vary from the content of the original check's MICR line. ANS X9.100-140 also specifies circumstances in which a substitute check MICR line need not be printed in magnetic ink.

However, two types of deposits, U.S. Treasury checks and "on us" checks, must receive next-day availability even if the deposit is not made at a staffed teller station. Other next-day check deposits, and cash deposits, that are not made at staffed teller stations must be available for withdrawal on the second business day after the day of deposit under §229.10(a)(2) and §229.10(c)(2).

Additional Rules

Under §229.10(c)(1)(iv-v), for state and local government checks to receive next-day availability, the depository bank must be located in the same state as the governmental unit issuing the check. Further, under §229.10(c)(3), the depository bank may require special deposit slips or envelopes for these deposits, as well as for cashier's, certified and teller's check deposits. If the depository bank requires the use of special deposit slips, it must either provide the slips or inform customers how they may be obtained.

For "on us" checks to receive next-day availability, the checks must be drawn on the same or another branch of the bank where the check is deposited. In addition, both branches must be located in the same state or check processing region.

$100 Rule

Section 229.10(c)(1)(vii) of the regulation contains a special $100 rule for check deposits not subject to next-day availability. Under the rule, the depository bank must make available for withdrawal the lesser of $100 or the aggregate amount deposited to all accounts, including individual and joint accounts, held by the same customer on any one banking day. The $100 rule does not apply to deposits received at nonproprietary Automated Teller Machines (ATMs).

Availability Schedule – §229.12

The permanent availability schedule became effective on September 1, 1990. (*See* Permanent Funds Availability Schedule-Figures A & B on the following pages.) Under this schedule, local check deposits must be made available no later than the second business day following the banking day of deposit. Deposits of nonlocal checks must be made available no later than the fifth business day following the banking day of deposit. Funds, including cash and all checks, deposited at nonproprietary ATMs must be made available no later than the fifth business day following the banking day on which the funds were deposited.

Checks that would normally receive next-day availability are treated as local or non-local check deposits if they do not meet all the criteria for next-day availability under §229.10(c). (As mentioned earlier, certain checks generally deposited at a staffed teller station and into an account held by the payee of the check receive next-day availability. However, state, local government and certain "on us" checks are subject to additional rules.)

U.S. Treasury checks and U.S. Postal Money orders that do not meet all the requirements for next-day or second day availability as outlined in §229.10(c) receive funds availability as if they were "local" checks. Cashiers, certified, teller's, state and local government, and checks drawn on the Federal Reserve or Federal Home Loan Banks that do not meet all the requirements in §229.10(c) receive funds availability as either local or non-local checks, according to the location of the bank on which they are drawn.

Cash Withdrawals

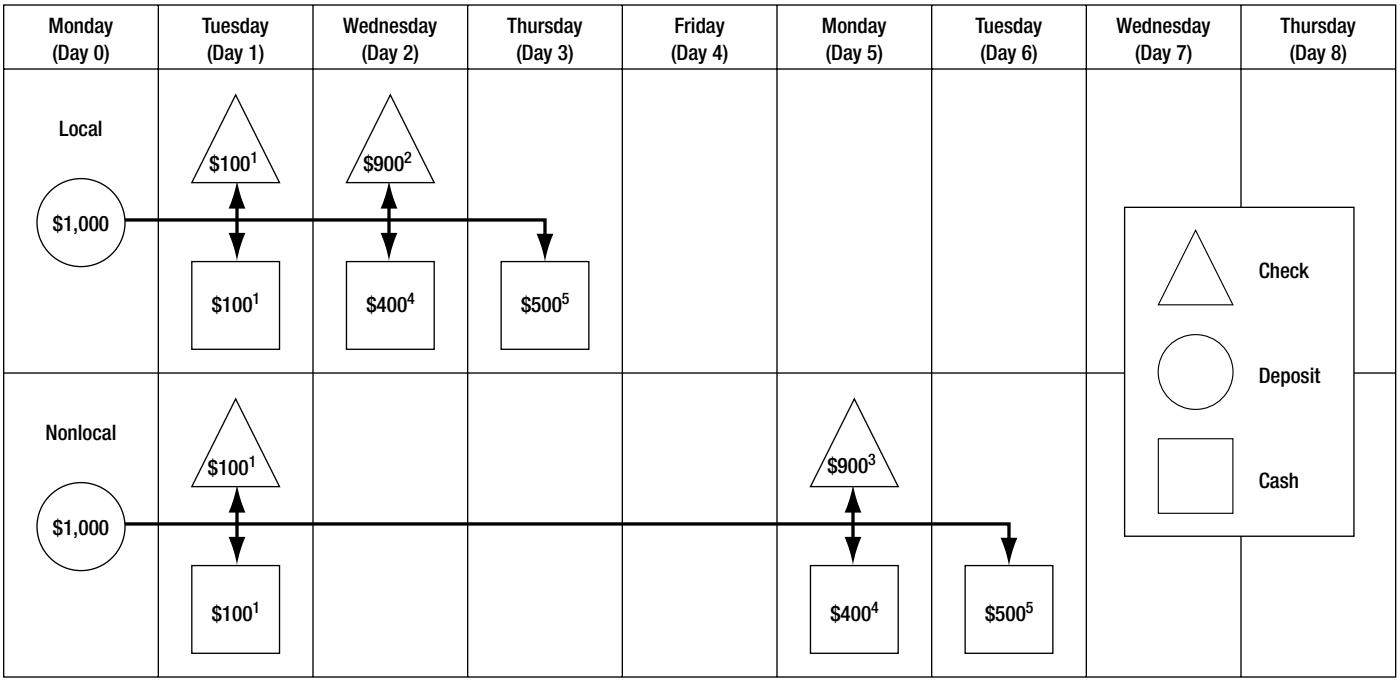
Special rules apply to cash withdrawals from local and non-local check deposits. While §229.12 (d) allows the depository bank to extend the availability schedule for cash or similar withdrawals by one day, the customer must still be allowed to withdraw the first $100 of any check deposit not subject to next-day availability on the business day following the day of deposit. In addition to the first $100, a customer must also be allowed to withdraw $400 of the deposited funds (or the maximum amount that can be withdrawn from an ATM, but not more than $400) no later than 5 p.m. on the day funds become available for check withdrawals. The remainder of deposited funds would be available for cash withdrawal on the following business day.

Extension of the Schedule for Certain Deposits

Section 229.12(e) provides that banks in Alaska, Hawaii, Puerto Rico, or the Virgin Islands receiving checks drawn on or payable through banks located in another state may extend the availability schedules for local and non-local checks by one day. This exception, however, does not apply to checks drawn on banks in these states or territories and deposited in banks located in the continental U.S.

Figure A: Permanent Funds Availability Schedules

Illustrates availability of different types of checks deposited the *same day*, under the permanent schedules



[1] The first $100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

[2] Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).

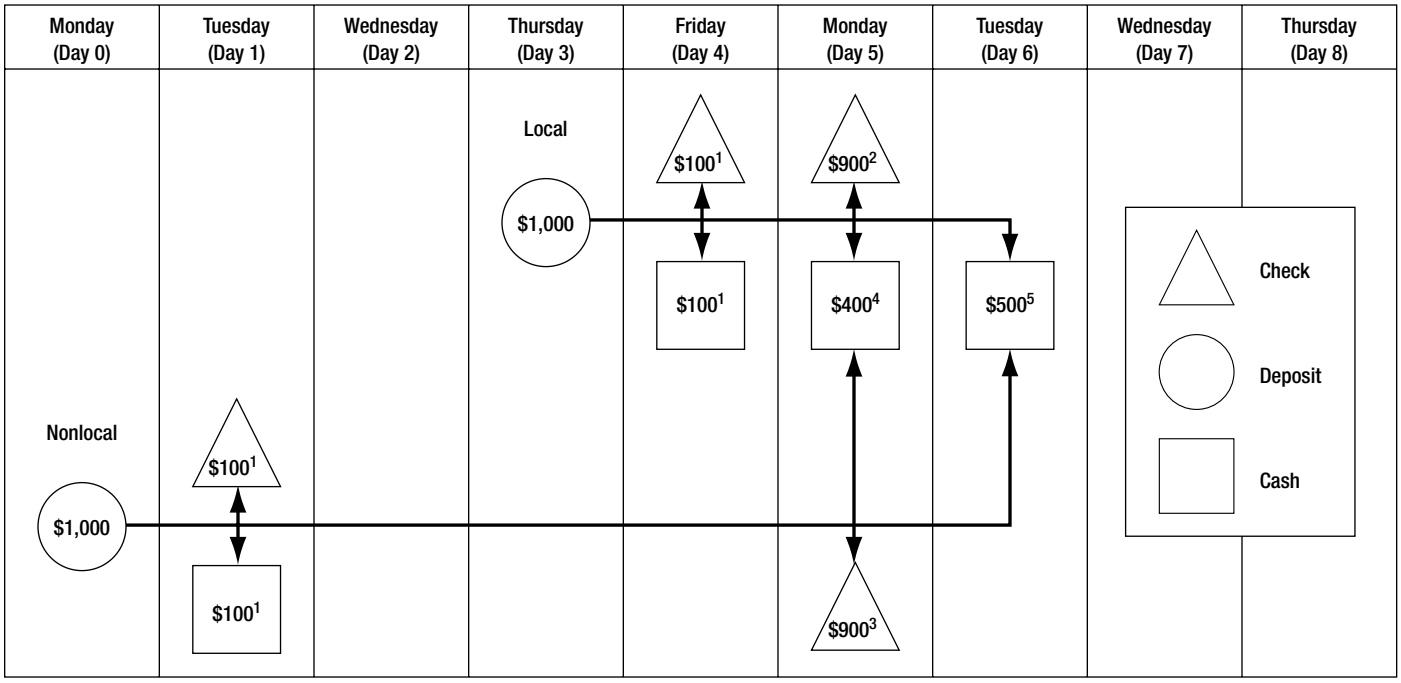
[3] Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).

[4] $400 of the local deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the $100 that must be made available on the business day following deposit § 229.12(d).

[5] The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Figure B: Permanent Funds Availability Schedules

Illustrates availability of different types of checks deposited *separate days*, under the permanent schedules



[1] The first $100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

[2] Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).

[3] Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).

[4] $400 of the local deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the $100 that must be made available on the business day following deposit § 229.12(d).

[5] The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Exceptions – §229.13

The regulation provides six exceptions that allow banks to exceed the maximum hold periods in the availability schedules. The regulation regards the exceptions as "safeguards" to the maximum availability time frames because they are intended to offer the institution a means of reducing risk based on the size of the deposit, past performance of the depositor, lack of depositor performance history, or belief that the deposit may not be collectible. These exceptions include:

- New accounts;
- Deposits in excess of $5,000 on any one day;
- Checks that have been returned unpaid and are being redeposited;
- Deposits to accounts that have been repeatedly overdrawn;
- Cases in which the bank has a reasonable cause to believe the check being deposited is uncollectable; and
- Emergency conditions.

While banks may exceed the time frames for availability in these cases, the exceptions may generally not be invoked if the deposit would ordinarily receive next-day availability.

New Accounts Exception

An account is considered a "new account" under §229.13(a) for the first 30 days after it is established. An account is not considered "new" if each customer on the account had another established account at the bank for at least 30 calendar days. The new account exception applies only during the 30-day period, beginning on the date the account is established, and does not cover all deposits made to the account.

Although the regulation exempts new accounts from the availability schedules for local and non-local checks, next-day availability is required for deposits of cash and for electronic payments. Additionally, the first $5,000 of a day's aggregate deposits of government checks (including federal, state, and local governments), cashier's, certified, teller's, depository or traveler's checks must be given next-day availability. The amount in excess of $5,000 must be made available no later than the ninth business day following the day of deposit.

To qualify for next-day availability, deposits into a new account must generally be made in person to an employee of the depository bank. If the deposits are not made in person to an employee of the depository bank, such as an ATM deposit, availability may be provided on the second business day after the day of deposit. U.S. Treasury check deposits, however, must be given next-day availability regardless of whether they are made at staffed teller stations or proprietary ATMs. Banks are not required to make the first $100 of a day's deposits of local and non-local checks or funds from "on us" checks available on the next business day.

Large Deposit Exception (Deposits over $5,000)

Under §229.13(b), the large deposit exception, a depository bank may extend hold schedules when deposits other than cash or electronic payments exceed $5,000 on any one day. A hold may be applied to the amount in excess of $5,000. To apply the rule, the depository bank may aggregate deposits made to multiple accounts held by the same customer, even if the customer is not the sole owner of the accounts.

Redeposited Check Exception

Under §229.13(c), the depository bank may delay the availability of funds from a check if the check had previously been deposited and returned unpaid. This exception does not apply to checks that were previously returned unpaid because of a missing indorsement or because the check was postdated when presented.

Repeated Overdraft Exception

Section 229.13(d) provides that if a customer's account, or accounts, have been repeatedly overdrawn during the preceding six months, the bank may delay the availability of funds from checks. A customer's account may be considered "repeatedly overdrawn" in two ways. First, the exception may be applied if the account (or accounts) have been overdrawn, or would have been overdrawn had checks or other charges been paid, for six or more banking days during the preceding six months.

Second, the exception may be applied to customers who incur overdrafts on two banking days within the preceding six month period if the negative balance in the account(s) is equal to or greater than $5,000. This exception may also apply if the account would have been overdrawn by $5,000 or more had checks or other charges been paid.

Reasonable Cause to Doubt Collectability Exception

This exception, in §229.13(e), may be applied to all checks. To trigger this exception, the depository institution must have "reasonable cause" to believe that the check is not collectible and must disclose the basis for the extended hold to the customer. For example, reasonable cause may include communication with the paying bank indicating that:

- There has been a stop payment placed on the check;
- There are insufficient funds in the drawer's account to cover the check; or
- The check will be returned unpaid.

The "reasonable cause" exception may also be invoked in cases where:

- The check is deposited six months after the date of the check (stale date);
- The check is postdated (future date);

- The depository bank believes that the depositor may be engaged in check kiting.

The "reasonable cause" exception may ***not be*** invoked because of:

- The race or national origin of the depositor; or
- The fact that the paying bank is located in a rural area and the depository bank will not have time to learn of nonpayment of the check before the funds have to be made available under the availability schedules in place.

Whenever this exception is used, the bank must notify the customer, in writing, at the time of deposit. If the deposit is not made in person or the decision to place the hold is based on facts that become known to the bank at a later date, the bank must mail the notice by the first business day after the day the deposit is made or the facts become known. The notice must indicate that availability is being delayed and must include the reason that the bank believes the funds are uncollectable. If a hold is placed on the basis of confidential information, as when check kiting is suspected, the depository bank need only disclose to the customer that the hold is based on confidential information that the check may not be paid.

If the bank asserts that the hold was placed due to confidential information, the bank must note the reason on the notice it retains as a record of compliance. The depository bank must maintain a record of each exception notice for a period of two years. This record should contain a brief description of the facts or any documents supporting the "reasonable cause" exception.

Overdraft and Returned Check Fees

Under §229.13(e)(2), if a depository bank invokes the "reasonable cause" exception and does not inform the customer in writing at the time of the deposit, the bank may not charge the customer any overdraft or returned check fees resulting from the hold if:

- The deposited check is paid by the paying bank; and
- The overdraft or returned check would not have occurred had the depository bank not imposed the reasonable cause hold.

However, the depository bank may assess overdraft or returned check fees if, on the exception hold notice, it states that the customer may be entitled to a refund of any overdraft or return check fees imposed and describes how the customer may obtain such a refund. It must then refund the fees upon request.

Emergency Conditions

Section 229.13(f) of the regulation also permits institutions to suspend the availability schedules under emergency conditions. Emergency situations include:

- Any interruption of communication facilities;
- Suspension of payments by another depository institution;
- War; or
- Any emergency condition beyond the control of the receiving depository institution.

Notice of Exception

Whenever a bank invokes one of the exceptions (excluding new accounts) to the availability schedules, it must notify the customer in writing in accordance with §229.13(g). Banks may send notices that comply solely with §229.13(g)(1), or may comply with two alternative notice requirements discussed below.

General Notice Requirements

Banks complying with §229.13(g)(1) must send notices which include:

- The customer's account number;
- The date of the deposit;
- The amount of the deposit that will be delayed;
- The reason the exception was invoked; and
- The day the funds will be available for withdrawal (unless unknown, as in an emergency situation).

If the deposit is made at a staffed facility, the written exception notice may be given to the person making the deposit regardless of whether the "depositor" is the customer who holds the account. If the deposit is not made at a staffed facility, the exception notice may be mailed to the customer no later than the business day following the banking day of deposit. If however, the depository bank discovers a reason to delay the funds, subsequent to the time the notice should have been given, the bank must notify the customer of the hold as soon as possible, but not later than the business day after the facts become known. In certain instances, exception holds based on "emergency" situations do not require notification to customers. For example, if deposited funds, subject to holds placed during an "emergency", become available for withdrawal before the notices are required to be sent, the depository bank is not required to send the notices to its customers.

Exception Notice for Nonconsumer Accounts

If most check deposits to a nonconsumer account permit the bank to invoke either the large dollar or redeposited check exception, the bank may send a notice complying with §229.13(g)(1), or may send a one-time notice in accordance with §229.13(g)(2). The one-time notice must be sent when the first exception is invoked, or can be delivered before that time. The notice must state:

- The reason the exception may be invoked; and

- The time period when the funds will generally be made available.

Exception Notice for Repeated Overdrafts

If most check deposits to an account permit the bank to invoke the repeated overdraft exception, the bank may send a notice complying with §229.13(g)(1), or may send a notice in accordance with §229.13(g)(3). The notice must be sent when the overdraft exception is first invoked. The notice must state:

- The customer's account number;
- The fact that funds are being delayed because the repeated overdraft exception will be invoked;
- The time period the exception will be invoked; and
- The time period when the funds will generally be made available.

Availability of Deposits Subject to Exceptions

For exceptions (other than new accounts), §229.13(h) allows the depository bank to delay availability for a "reasonable" time beyond the schedule. Generally, a "reasonable" period will be considered to be no more than one business day for "on-us" checks, five business days for local checks, and six business days for non-local checks. If a depository bank extends its availability beyond these time frames, it must be able to prove that such a delay is "reasonable".

Payment of Interest – §229.14

General Rule

A depository bank must begin accruing interest on interest-bearing accounts no later than the business day on which it receives provisional credit for the deposited funds. A depository bank typically receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and a check that is drawn on itself on the day the cash, check or electronic payment is received. If a nonproprietary ATM is involved, credit is usually received on the day the bank that operates the ATM credits the depository bank for the amount of deposit.

Section 229.14(a)(1) permits a bank to rely on the availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine when the depository bank receives credit. If availability is delayed beyond what is specified in the schedule, a bank may charge back interest, erroneously paid or accrued, on the basis of that schedule.

Section 229.14(a)(2) permits a depository bank to accrue interest on checks deposited to all of its interest-bearing accounts based on an average of when the bank receives credit for all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited by check as of the business day of deposit (e.g., "on us" checks), 70 percent as of the business day following deposit, and ten percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue for check deposits on all interest-bearing accounts, regardless of when the bank received credit for funds deposited in any particular account. Consequently, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without having to track the type of check deposited to each account.

Nothing in §229.14(a) limits a depository bank policy that provides that interest can only accrue on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period. However, the balance must be determined according to the date the depository bank receives credit for the funds. This section also does not limit any policy providing that interest can accrue sooner than required by the regulation.

Money market deposit accounts, savings deposits, and time deposits, are not subject to the general rule concerning the timing of interest payment. However, for simplicity of operation, a bank may accrue interest on such deposits in the same manner that it accrues interest on transaction accounts.

Exemption for Certain Credit Unions

Section 229.14(b) contains an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from §229.14(a) as long as they provide notice of their interest accrual policies in accordance with §229.16(d).

Section 229.14(c) provides an exception to the general rule in §229.14(a) for checks that are returned unpaid. Essentially, interest need not be paid on funds deposited in an interest-bearing account by a check that has been returned unpaid, regardless of the reason for return.

General Disclosure Requirements – §229.15

Form of disclosure

A bank must disclose its specific availability policy to its customers. The required disclosures must be clear and conspicuous, and must also be in writing under §229.15(a). Disclosures, other than those posted at locations where employees accept consumer deposits, at ATMs or on preprinted deposit slips, must be in a form that the customer may keep. These disclosures must not contain information unrelated to the requirements of the regulation. If other account terms are included in the same document, disclosures pertinent to this regulation should be highlighted such as, under a separate heading.

Uniform Reference to Day of Availability

§229.15(b) requires banks to refer to the day funds will be available for withdrawal in a uniform manner in all of their disclosures. Disclosures must refer to when funds will be available for withdrawal as on "the_____ business day after" the day of deposit. The first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

Multiple Accounts and Multiple Account Holders

A bank does not need to give multiple disclosures to customers who have more than one account if the accounts are subject to the same availability policies. In addition, the bank does not have to give separate disclosures to joint account holders. A single disclosure to one of the holders of the joint account is permissible under §229.15(c).

Dormant or Inactive Accounts

Section 229.15(d) provides that the bank does not have to give disclosures to customers who have dormant or inactive accounts.

Specific Availability Policy Disclosure – §229.16

A bank must provide its customers with a disclosure that describes its funds availability policy. The disclosure must reflect the policy followed by the institution in most cases; however, the institution may impose longer delays on a case-by-case basis or by invoking one of the exceptions in §229.13, provided this is reflected in the disclosure.

Content of Specific Availability Policy Disclosure

The specific availability policy disclosure in §229.16(b) must include, as applicable, the following:

- A summary of the bank's availability policy;
- A description of the categories of deposits or checks used by the bank when it delays availability, such as local or nonlocal checks; how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);
- A description of any of the exceptions in §229.13 that may be invoked by the bank, including the time the deposited funds will generally become available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;
- A description of any case-by-case policy of delaying availability which may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy (*see* specific requirements under §229.16(c)(1)); and
- A description of how the customer can differentiate between a proprietary and nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available later than funds from deposits at proprietary ATMs.

Longer Delays on a Case-by-Case Basis

A bank that has a policy of making deposited funds available for withdrawal sooner than required, may extend the time when funds are available up to the time periods allowed under the regulation on a case-by-case basis. However, the bank must include the following in its specific policy disclosure under §229.16(c):

- A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time deposited funds will be available for withdrawal;
- A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until after the time periods stated in the bank's availability policy; and
- A statement that customers should ask if they need to know when a particular deposit will be available for withdrawal.

When a depository bank extends the time that funds will be available for withdrawal, on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information:

- The customer's account number;
- The date of the deposit;
- The amount of the deposit being delayed; and
- The day the funds will be available for withdrawal.

The notice must be provided at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank, or when the decision to delay availability is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank must mail or deliver the notice to the customer no later than the first business day following the banking day the deposit is made.

A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit may not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if:

- The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under §229.16(c)(1) of the regulation; and

- The deposited check was paid by the paying bank.

However, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the disclosure required in §229.16(c)(2) and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid, and state how to obtain a refund.

Credit Union Notice of Interest Payment Policy

Under §229.16(d), if a credit union begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in §229.14(a), the institution's specific policy disclosures must contain an explanation of when interest or dividends on deposited funds will begin to accrue.

Initial Disclosures – §229.17

New Accounts

Section 229.17(a) states a bank must provide potential customers with the disclosures described in §229.16 before an account is opened.

Additional Disclosure Requirements – §229.18

Deposit Slips

Under §229.18(a), all preprinted deposit slips given to customers must include a notice that deposits may not be available for immediate withdrawal.

Location Where Employees Accept Consumer Deposits

Section 229.18(b) provides that a bank must post, at a conspicuous place at each location where its employees receive deposits to consumer accounts, a notice that sets forth the time periods applicable to the availability of funds deposited.

Automated Teller Machines

Under §229.18(c), a depository bank must post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal. A depository bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in §229.19(a)(4), must disclose at or on the ATM the days in which deposits made at the ATM will be considered received.

Upon Request

Section 229.18(d) states a bank must provide a copy of its specific availability policy disclosure described in §229.16 to any person who requests it.

Changes in Policy

Thirty days prior to implementation, a bank must send notification of a change to the bank's availability policy to all account holders, if adversely affected by the change. Under §229.18(e), changes that result in faster availability may be disclosed no later than 30 days after implementation.

Miscellaneous – §229.19

When Funds are Considered Deposited

Section 229.19(a) provides rules that govern when funds are considered deposited for purposes of Subpart B of the regulation. The time that funds must be made available for withdrawal is measured from the day the deposit is "received. " Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if the mail is initially delivered to a mail room, rather than the check processing area.

Funds, however, may also be deposited at an unstaffed facility such as a night depository or lock box. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing. A lock box is typically used by a corporation for the collection of bill payments or other check receipts.

The regulation contains a special rule for off-premise ATMs that are not serviced daily. Funds deposited at these ATMs are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This special provision is geared toward those banks whose practice is to service remote ATMs infrequently. If a depository bank uses this provision, it must post a notice at the ATM informing depositors that funds deposited at the ATM may not be considered received on the date of deposit.

Funds deposited on a day the depository bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, a bank may establish a cut-off

hour of 2:00 p.m. or later for receipt of deposits at its main office or branch offices. A cut-off hour of 12:00 noon or later may be established for deposits made to ATMs, lock boxes, night depositories, or other off-premises facilities. (As specified in the commentary to §229.19(a), the noon cut-off period relates to the local time of the branch or other location of the depository bank where the account is maintained or the local time of the ATM or off-premise facility).

Different cut-off hours may be established for different types of deposits. For example, a 2:00 p.m. cut-off for receipt of check deposits and a later time for receipt of wire transfers is permissible. Location can also play a role in the establishment of cut-off hours. For example, a different cut-off hour may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cut-off hour for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits can be established earlier than 2:00 p.m.

When Funds Must Be Made Available

Section 229.19(b) discusses funds availability at the start of a business day. Generally, funds must be available for withdrawal by the later of 9:00 a.m. or the time a depository bank's teller facilities including ATMs are available for customer account withdrawals. (Under certain circumstances, there is a special exception for cash withdrawals-*see* §229.12(d)). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for withdrawal by 10:00 a.m. If a bank has 24 hour ATM service, funds must be available by 9:00 a.m. for ATM withdrawals.

The start of business is determined by the local time where the branch or depository bank holding the account is located. For example, if funds in an account at a west coast bank are first made available at the start of business on a given day, and a customer attempts to withdraw the funds at an east coast ATM, the depository bank is not required to make funds available until 9:00 a.m. west coast time (12:00 noon east coast time).

Effects of the Regulation on Policies

Section 229.19(c) describes the effects of the regulation on the policies of a depository bank. Essentially, a depository bank is permitted to provide availability to its customers in a shorter time than that prescribed in the regulation. It may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, it may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

The regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depository bank to have its facilities open for customers to make withdrawals at specific times or on specific days. For example, even though the special cash withdrawal rule set forth in §229.12(d) states that a bank must make up to $400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

If a bank has a policy of limiting cash withdrawals at ATMs to $250 per day, the regulation would not require that the bank dispense $400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

Some small financial institutions do not keep cash on their premises and offer no cash withdrawal capability to their customers. Others limit the amount of cash on-premises for bonding purposes, and reserve the right to limit the amount of cash that a customer can withdraw on a given day, or require advance notice for large cash withdrawals. Nothing in the regulation is intended to prohibit these practices if they are applied uniformly and are based on security, operating, or bonding requirements, and are not dependent upon the length of time the funds have been in the customer's account, as long as the permissible hold has expired. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

Calculated Availability for Nonconsumer Accounts

Section 229.19(d) contains the rules for using calculated availability on nonconsumer accounts. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability

terms that result from the sample are equivalent or more prompt than the requirements of this regulation.

Holds on Other Funds

Section 229.19(e) clarifies that, if a customer deposits a check, the bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check deposited, and the total amount of funds held are made available for withdrawal within the times required in this regulation. For example, if a customer cashes a check (other than an "on us" check) over-the-counter, the depository bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the cashed check.

Employee Training and Compliance

Section 229.19(f) contains the requirements for employee training and compliance. The EFA Act requires banks to inform each employee who performs duties subject to the Act about its requirements. The EFA Act and Regulation CC also require banks to establish and maintain procedures designed to ensure and monitor employee compliance with such requirements.

Effects of Mergers

Section 229.19(g) explains the effect of a merger transaction. Merged banks may be treated as separate banks for a period of up to one year after consummation of the merger transaction. However, a customer of any bank that is a party to the merger transaction, and has an established account with the merging bank, may not be treated as a new account holder under the new account exception of §229.13(a). A deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with §220.19(a). This rule affects the status of the combined entity in a number of areas. For example:

- When the resulting bank is a "participant" in a check clearinghouse association;
- When an ATM is a "proprietary ATM"; and
- When a check is drawn on a branch of the depository bank.

Relation to State Law – §229.20

General Rule

Section 229.20(a) contains the general rule as to how Regulation CC relates to state laws addressing expedited funds availability.

If a state has a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Accordingly, the state schedule would supersede the federal schedule to the extent that is applies to in-state, nonlocal checks.

The EFA Act also indicates that any state law providing availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

Preemption of Inconsistent Law

Section 229.20(b) provides that other provisions of state laws that are inconsistent with federal law are preempted. State laws requiring disclosure of availability policies for transaction accounts are preempted by the regulation. Preemption does not require a determination of the Federal Reserve Board in order to be effective.

Preemption Standards and Determinations

The Federal Reserve Board may issue a preemption determination upon the request of an interested party in a state. The determination will only relate to the provisions of Subparts A and B of the regulation.

Civil Liability – §229.21

Statutory Penalties

Section 229.21(a) sets forth the statutory penalties that can be imposed as a result of a successful individual or class action suit brought for violations of Subpart B of the regulation. Basically, a bank could be held liable for:

- Actual damages;
- Not less than $100 nor more than $1,000 in the case of an individual action;
- The lesser of $500,000 or one percent of the net worth of the bank involved in the case of a class action; and/or
- The costs of the action together with reasonable attorney's fees as determined by the court.

These penalties also apply to provisions of state law that supersede provisions of this regulation such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (*See* Commentary to Appendix D, §229.20)

Bona Fide Errors

Section 229.21(c) states that a bank will not be considered liable for violations of the regulation if it can demonstrate, by a preponderance of evidence, that violations resulted from bona fide errors and that it maintains procedures designed to avoid such errors.

Reliance on Federal Reserve Board Rulings

Section 229.21(e) provides that a bank will not be held liable if it acts in good faith in reliance on any rule, regulation, model form (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Federal Reserve Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary as well as on the regulation itself.

Exclusions

The liability established by this section does not apply to violations of Subpart C (Collection of Checks) of the regulation, or to actions for wrongful dishonor of a check by a paying bank's customer. (Separate liability provisions applying to Subpart C are found in §229.38)

Subpart C – Collection of Checks

Subpart C covers the check collection system and includes rules to speed the collection and return of checks. Basically, these rules cover the return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment on large-dollar returns of the paying bank, and mandatory check indorsement standards.

Sections 229.30 and 229.31 require paying and returning banks to return checks expeditiously using one of two standards: the "two-day/four-day" test and the "forward collection" test. Under the "two-day/four-day" test a local check is received by the depository bank two business days after presentment and a nonlocal bank four business days after presentment. The "forward collection" test is when the paying bank uses comparable transportation methods and banks, for returns, as those used for forward collection. The paying bank can return checks directly to the depository bank of any bank agreeing to process the returns, including the Federal Reserve.

Subpart C, in §229.33, also requires a bank to provide notification of nonpayment if it determines not to pay a check of $2,500 or more, regardless of the channel of collection. The regulation addresses the depository bank's duty to notify its customers that a check is being returned and the paying bank's responsibility for giving notice of nonpayment.

Other areas that are covered in Subpart C are indorsement standards, warranties by paying and returning banks, bona fide errors and liability, variations by agreement, insolvency of banks, and the effect of merger transactions.

The provisions of Subpart C §229.41 supersede any state law, but only to the extent that it is inconsistent with Regulation CC.

The expeditious return requirements of §229.42 do not apply to checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or units of general local government and that are not payable through or at a bank.

Subpart D – Substitute Checks

General Provisions Governing Substitute Checks – §229.51

A substitute check for which a bank has provided the warranties described in §229.52[4] is the legal equivalent of an original check if the substitute check:

- Accurately represents all of the information on the front and back of the original check; and
- Bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check."[5]

The reconverting bank must adhere to Regulation CC's standards for preserving bank indorsements and identifications. A reconverting bank that receives consideration for a substitute check that it transfers, presents, or returns also is the first bank to provide the warranties described in §229.52 and the indemnity described in §229.53.

Substitute Check Warranties and Indemnity – §§229.52 and 229.53

Starting with the reconverting bank, any bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) and receives consideration for that check warrants that the substitute check meets the legal equivalence requirements and that a check that has already been paid will not be presented for subsequent payment.

Such a bank also provides an indemnity to cover losses that the recipient and any subsequent recipient of the substitute check incurs due to the receipt of a substitute check instead of the original check.

Expedited Recredit for Consumers – §229.54

Section 229.54(a) sets forth the conditions under which a consumer may make an expedited recredit claim for losses associated with the consumer's receipt of a substitute check.

4 A person other than a bank that creates a substitute check could transfer that check only by agreement unless and until a bank provides the substitute check warranties.

5 A bank may not vary the language of the legal equivalence legend.

To use the expedited recredit procedure, the consumer must be able to assert in good faith that:

- the consumer's account was charged for a substitute check that was provided to the consumer;
- the consumer's account was improperly charged or the consumer has a warranty claim;
- the consumer suffered a loss; and
- the consumer needs the original check or a sufficient copy to determine the validity of the claim.

To make a claim, the consumer must comply with the timing, content, and form requirements in §229.54(b). This section generally provides that a consumer's claim must be received by the bank that holds the consumer's account no later than the fortieth calendar day after the later of:

- the calendar day on which the bank mailed (or delivered by a means agreed to by the consumer) the periodic statement describing the contested transaction; or
- the calendar day on which the bank mailed (or delivered by a means agreed to by the consumer) the substitute check itself.

Section 229.54(b)(1)(ii) requires the bank to give the consumer an additional, reasonable period of time if the consumer experiences "extenuating circumstances" that prevent timely submission of the claim.

The commentary to §229.60 provides that the bank may voluntarily give the consumer more time to submit a claim than the rule allows.

Under §229.54(b)(2)(ii), a complaint is not considered complete, and thus does not constitute a claim, until it contains all of the required information the rule requires. The rule requires the claim to contain:[6]

- a description of why the consumer believes the account was improperly charged or the nature of the consumer's warranty claim;
- a statement that the consumer has suffered a loss and an estimate of the amount of the loss;
- a reason why the original check (or a copy of the check that is better than the substitute check the consumer already received) is necessary to determine whether the consumer's claim is valid; and
- sufficient information to allow the bank to identify the substitute check and investigate the claim.

A bank, in its discretion, may require the consumer to submit the claim in writing. If a consumer makes an oral claim to a bank that requires a written claim, the bank must inform the consumer of the in-writing requirement at that time. Under those circumstances, the bank must receive the written claim by the later of ten business days from the date of an oral claim or the expiration of the consumer's initial 40-day period for submitting a timely claim. As long as the original oral claim fell within the 40-day requirement for notification and a complete written claim was received within the additional ten-day window, the claim meets the timing requirements (§§229.54(b)(1) and 229.54(b)(3)), even if the written claim was received after the expiration of the initial 40-day period.

The Bank's Action on Claims

Section 229.54(c) requires a bank to act on the consumer's claim no later than the tenth business day after the banking day on which it received the consumer's claim:

- If the bank determines that the consumer's claim is valid, it must recredit the consumer's account no later than the end of the business day after the banking day on which it makes that determination. The amount of the recredit should be for the amount of the consumer's loss, up to the amount of the substitute check, plus interest on that amount if the account is an interest-bearing account. The bank must then notify the consumer of the recredit using the notice discussed below (***Notices Relating to Expedited Recredit Claims***).
- If the bank determines that the consumer's claim is invalid, it must notify the consumer of that decision using the notice discussed below (***Notices Relating to Expedited Recredit Claims***).
- If the bank has not determined the validity of the consumer's claim by the tenth business day after the banking day on which the bank received the claim, the bank must recredit the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check or $2,500, whichever is less. The bank also must recredit interest on that amount if the consumer's account is an interest-bearing account. The bank must send a notice to that effect to the consumer using the notice discussed below (***Notices Relating to Expedited Recredit Claims***). If the consumer's loss was more than $2,500, the bank has until the end of the forty-fifth calendar day from the date of the claim to recredit any remaining amount of the consumer's loss, up to the amount of the substitute check (plus interest), unless it determines prior to that time that the claim was invalid and notifies the consumer of that decision.

Section 229.54(d) generally requires that recredited funds receive next day availability. However, a bank that provisionally recredits funds pending further investigation may invoke safeguard exceptions to delay availability of the recredit under the limited circumstances described in

6 If a consumer submits an incomplete complaint, the bank must so inform the consumer and must tell the consumer what information is missing.

§229.54(d)(2). The safeguard exceptions apply to new accounts and repeatedly overdrawn accounts, or if the bank has reasonable cause to suspect the claim is fraudulent. A bank may delay availability of a provisionally-recredited amount until the start of the earlier of the business day after the banking day on which the bank determines the consumer's claim is valid or the 45th calendar day after the banking day on which the bank received the claim if the account is new, the account is overdrawn, or the bank has reasonable cause to believe that the claim is fraudulent. When the bank delays availability under this section, it may not impose overdraft fees on checks drawn against the provisionally-credited funds until the fifth calendar day after the day on which the bank sent the notice regarding the delayed availability.

If, after providing the recredit, the bank determines that the consumer's claim was invalid, the bank may reverse the recredit. This reversal must be accompanied by a consumer notification using the notice discussed below (***Notices Relating to Expedited Recredit Claims***).

Notices Relating to Expedited Recredit Claims

Section 229.54(e) outlines the requirements for providing consumer notices related to expedited recredit:

- The bank must send the notice of recredit no later than the business day after the banking day on which the bank recredits the consumer's account. This notice must include the amount of the recredit and the date the recredited funds will be available for withdrawal.
- The bank must send notice that the consumer's claim is not valid no later than the business day after the banking day on which the bank makes this determination. This notice must include the original check or a sufficient copy of it. (Except as provided in §229.58, *see* below). The notice must demonstrate to the consumer why the claim is not valid. The notice also must include either any information or document that the bank used in making its determination or an indication that the consumer may request copies of this information.
- The bank must send the notice of a reversal of recredit no later than the business day after the banking day on which the bank made the reversal. The notice must include all of the information required in a notice of invalid claim plus the amount (including interest) and date of the reversal. §229.54(e)(3)(i).

Appendix C to Regulation CC contains model forms (models C-23 through C-25) that a bank may use to craft the various notices required §229.54(e). Although there is no statutory safe harbor for appropriate use of these models, the Board published them to assist banks in complying with §229.54(e).

Expedited Recredit for Banks – §229.55

Section 229.55 sets forth expedited recredit procedures applicable between banks. A claimant bank must adhere to the timing, content, and form requirements of §229.55(b) in order for the claim to be valid. A bank against which an interbank recredit claim is made has ten business days within which to act on the claim (§229.55(c)). The provisions of §229.55 may be varied by agreement. (No other provisions of subpart D may be varied by agreement).

Liability – §229.56

Section 229.56 describes the damages for which a bank or person would be liable in the event of breach of warranty or failure to comply with subpart D:

- The amount of the actual loss, up to the amount of the substitute check, resulting from the breach or failure, and
- Interest and expenses (including costs, reasonable attorney's fees, and other expenses of representation) related to the substitute check.

These amounts could be reduced in the event of negligence or failure to act in good faith. It is also important to note that §229.56 has a specific exception that allows for greater recovery as provided in the indemnity section. Thus, a person that had an indemnity claim that also involves a breach of a substitute check warranty could recover all damages proximately caused by the warranty breach.

Section 229.56(b) excuses failure to meet this subpart's time limits because of circumstances beyond a bank's control. Section 229.56(c) provides that an action to enforce a claim under this subpart may be brought in any United States district court. Section 229.56(c) also provides the subpart's statute of limitations: one year from the date on which a person's cause of action accrues.[7] Section 229.56(d) states that if a person fails to provide notice of a claim for more than 30 days from the date on which a cause of action accrues, the warranting or indemnifying bank is discharged from liability *to the extent of any loss caused by the delay in giving notice of the claim*.

Consumer Awareness – §229.57

Content requirements

A bank must provide its consumer customers with a disclosure that explains that a substitute check is the legal equivalent of the original check and describes the consumer's recredit rights for substitute checks. A bank may, but is not required, to use the Board's model form (model C-5A in appendix C to Regulation CC) to meet the content requirements for this notice. A bank that uses the model form appropriately is

7 For purposes of this paragraph, a cause of action accrues as of the date on which the injured person first learns, or reasonably should have learned, of the facts giving rise to the claim, including the identity of the warranting or indemnifying bank against which the action is brought.

deemed to be in compliance with the content requirement(s) for which it uses language from the model form. A bank may provide the notice required by §229.57 along with other information.

Distribution to consumer customers who receive cancelled checks with periodic account statements

Under §229.57(b)(1), a bank must provide this disclosure to existing consumer customers who routinely receive their cancelled checks in their periodic statement no later than the first statement after October 28, 2004. For customer relationships established after that date, a bank must provide the disclosure to a new consumer customer who routinely will receive cancelled checks in periodic statements at the time the customer relationship is established.

Distribution to consumer customers who receive a substitute check on an occasional basis

Under §229.57(b)(2), a bank also must provide the disclosure to a consumer customer who receives a substitute check on an occasional basis, including when a consumer receives a substitute check in response to a request for a check or a copy of a check, or when a check deposited by the consumer is returned to the consumer as an unpaid item in the form of a substitute check. A bank must provide the disclosure to a consumer customer in these cases even if the bank previously provided the disclosure to the consumer.

When the consumer contacts the bank to request a check or a copy of a check and the bank responds by providing a substitute check, the bank must provide this disclosure at the time of the request, if feasible. Otherwise, the bank must provide the disclosure no later than when the bank provides a substitute check in response to the consumer's request. It would not be feasible to provide the disclosure at the time of the request if, for example, the consumer made his or her request by telephone or if the bank did not know at the time of the request whether it would provide a substitute check or some other document in response. A bank is not required to provide the disclosure if the bank responds to the consumer's request by providing something other than an actual substitute check (such as a photocopy of an original check or a substitute check).

When a bank returns a deposited item unpaid to a consumer in the form of a substitute check, the bank must provide the disclosure when it provides the substitute check.

Mode of Delivery of Information – §229.58

Section 229.58 provides that banks may deliver any notice or other information required under this subpart by United States mail or by any other means to which the recipient has agreed to receive account information, including electronically. A bank that is required to provide an original check or a sufficient copy (each of which is defined as a specific paper document) instead may provide an electronic image of the original check or sufficient copy if the recipient has agreed to receive that information electronically.

Examination Objectives – Part I

Subparts A and B

NOTE: Subpart C of Regulation CC, "Collection of Checks", has been omitted. It addresses exclusively payment systems issues among financial institutions. There are no consumer–related regulatory compliance issues to review during the course of an examination. Subpart D, "Substitute Checks" begins on page VI-1.20.

1. Determine that the financial institution's funds availability policies comply with Regulation CC.
2. Determine that the financial institution has established internal controls for compliance with Regulation CC's provisions relating to funds availability.
3. Determine that the financial institution has established a training program for applicable employees addressing Regulation CC responsibilities.
4. Determine that the financial institution maintains records of compliance with Regulation CC for a period of two years.

Examination Procedures

A financial institution may delay funds availability for some deposits on a case-by-case basis and on other deposits on an automatic basis. In addition, the institution may make decisions concerning holds and may maintain records at branches as well as the main office. Therefore, to check for compliance with the hold policies, the examiner must determine the types of holds employed and how the decisions are made and where the records are maintained. If a branch makes its decision and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If the decision to delay availability is either centralized or made at a regional processing center and records are maintained there, sampling for compliance may be made at that location.

General

1. Determine the types of transaction accounts, as defined in Regulation D [§204.2(e)] (e.g., demand deposits, NOW accounts, ATS accounts) offered by the financial institution.
2. Obtain copies of the forms used by the financial institution for transaction accounts, including but not limited to the following:
   - Specific availability policy disclosures
   - Exception hold notices
   - Case-by-case hold notices
   - Special deposit slips

- Change in terms notices

3. Determine, by account type, the institution's specific funds availability policies with regard to deposits.
4. Determine which individuals actually perform the various activities necessary to comply with the different provisions of Regulation CC, Subpart B. This would include, for example, personnel engaged in
   - Distributing disclosure statements
   - Employee training
   - Internal reviews
   - Computer program development for deposit accounts (not necessarily a computer programmer)
   - Deposit operations
   - Overdraft administration
   - ATM deposit processing
   - Private (personal) banking
   - Determining case-by-case holds or exceptions
5. Review the financial institution's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and other similar materials.
6. Determine the extent and adequacy of the instruction and training received by the individuals listed above to enable them to carry out their assigned responsibilities under Regulation CC.
7. Verify that the institution provides employees with a written copy of the Regulation CC procedures corresponding to their area of responsibility. [§229.19(f)(2)]

Initial Disclosures and Subsequent Changes

1. Review the financial institution's specific availability policy disclosure. Determine if the disclosure accurately reflects the financial institution's funds availability policies and meets the requirements under §229.16 for content.
2. Determine if the financial institution provides the initial disclosure statement prior to accepting funds to open a new transaction account or mails the disclosures within one business day of receiving a written request by mail, or a telephone request, to open a new account. [§229.17(a)]
3. Determine if the financial institution provides its funds availability policy upon an oral or written request within a reasonable time period. [§229.18(d)]
4. Determine if the financial institution has made changes to its availability policies since the last examination. If yes, determine whether the depositor was notified in accordance with §229.18(e).

Automatic (and/or Automated) Hold Policies

1. Review the financial institution's schedules or other materials outlining funds availability time periods for the following types of deposits:
   - Cash [§229.10(a)]
   - Electronic payments [§229.10(b)]
   - U.S. Treasury checks [§229.10(c)(1)(i) and 229.12(b)(2)]
   - U.S. Postal Service Money Orders [§229.10(c)(1)(ii), 229.10(c)(2) and 229. 12(b)(3)]
   - Checks drawn on Federal Reserve Banks or Federal Home Loan Banks [§229.10(c)(1)(iii), 229.10(c)(2), 229.12 (b)(4) and 229.12(c)(1)(ii)]
   - State or local government checks [§229.10(c)(1)(iv), 229.10(c)(2), 229.12(b)(4) and 229.12(c)(1)(ii)]
   - Cashier's, certified, and teller's checks [§229.10(c)(1)(v), 229.10(c)(2), 229.12(b)(4) and 229.12(c)(1)(ii)]
   - "On us" checks (checks drawn on the same bank or a branch thereof) [§229.10(c)(1)(vi) and 229.11(c)(1)(ii)]
   - Local checks (checks deposited from within same Federal Reserve check processing region as the paying bank) [§229.12(b)(1)]
   - Non-local checks (checks from a different check processing region) [§229.12(c)(1)(i)]
   - Credit union share draft accounts [commentary to §229.16(b)]
2. Determine that the financial institution's policy for providing funds availability is in accordance with regulatory requirements.
3. Determine the financial institution's procedures for placing holds.
4. Selectively sample each of the types of deposits listed in question one and verify the funds availability time frames. Determine, for each deposit category, whether the financial institution's procedures provide funds availability within the required time periods. Determine that the procedures and disclosed policy are the same.

ATM Deposits - Nonproprietary [§229.12(f)]

(*See* also §§229.19(a)(4), 229.19(a)(5)(ii) and commentary to 229.19(a), (b) for off-premises ATMs).

1. Determine that the institution makes funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the day of deposit.

Availability Rules $100 and $400 [§229.10(c)(1)(vii), and §229.12(d)]

1. Determine the financial institution's procedures for complying with the $100 availability rule and, if applicable, the $400 cash withdrawal rule.
2. Review records which detail holds placed on accounts. Determine if holds are in accordance with the regulation.
3. Sample deposit accounts with deposits subject to these rules and verify the institution's compliance with the rules. Verify that actual practices and policies match.

Extended Holds

Case-by-Case Holds

1. Determine if the financial institution places holds on a case-by-case basis. If yes, review the institution's procedures for placing case-by-case holds.
2. Review the specific availability policy disclosures to determine whether the case-by-case hold policy has been disclosed.
3. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated).
4. Sample a few of the case-by-case holds and determine whether the financial institution makes the funds available for withdrawal within the required time frames.
5. Determine whether the financial institution provides the customer with a notice of the case-by-case hold as required by §229.16(c)(2). Determine if the notices meet the timing and content requirements.
6. If the institution does not provide the notice at the time of deposit, determine whether it either discloses the availability of refunds of overdraft and returned check fees, or does not assess these fees, when the requirements of §229.16(c)(3) are met.

Exception Holds [§229.13]

1. Determine whether the financial institution places holds on an exception basis. If yes, review procedures for placing exception holds.
2. Review the specific availability policy disclosures to determine whether the institution has disclosed its exception holds policy.
3. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated).
4. Sample a few of the exception holds and determine when the financial institution makes the funds available for withdrawal. Determine that the financial institution does not add more than one business day for "on-us" checks, five business days for local checks, and six business days for nonlocal checks to the maximum time periods in the federal availability schedule for the deposit, unless it can show that a longer delay is reasonable. [§229.13(h)]
5. With the exception of new accounts, determine whether the financial institution provides the customer with an exception hold notice as required by §229.13(g).
6. Review hold notices. Determine if the notices meet the timing and content requirements for each type of exception hold.
   NOTE: institutions are required to retain copies of "reasonable cause" hold notices for a two-year time period.

New Accounts [§229.13(a)]

1. Review financial institution policies for new accounts.
2. Determine how the financial institution defines a "new account" relationship. Determine if the financial institution's definition is in compliance with Regulation CC §229.13(a).
3. Review the specific availability policy disclosure to determine whether the institution has disclosed its availability policy regarding new accounts.
4. Review a new account report or listing of new account holders. Determine if any holds were placed on the accounts.
5. Sample new deposit accounts and request that the financial institution provide documentation concerning the composition of the opening deposit.
6. Review holds placed and determine if holds are within regulatory limits with respect to time and amount. *See* §229.13(a)(1).
   NOTE: No regulatory time limits are set forth for funds availability for local and nonlocal check deposits into new accounts.

Large Deposits [§229.13(b)]

1. Determine whether the financial institution has procedures and a special hold policy for "large deposits". If yes, determine whether the institution considers a large deposit, for purposes of the large deposit exception, to be a day's aggregate deposit of checks exceeding $5,000.
2. Determine that the financial institution does not invoke the large deposit exception for cash or electronic payments.
3. Review at least one account deposit on which a large deposit hold was placed and ensure that the hold was placed only on the amount by which a day's deposit of checks exceeds $5,000.
4. Determine if the financial institution provided the customer with a written exception notice that meets the requirements of §229.13(g)(1) or (g)(2).

5. Determine if the notice was provided within the prescribed time frames of §229.13(g)(1) or (g)(2).

Redeposited Checks [§229.13(c)]

1. Determine if the financial institution has procedures and a special hold policy for redeposited checks.
2. If yes, determine if the institution refrains from imposing this exception solely because of a missing indorsement or because the check was postdated.
3. Determine if the financial institution provided the customer with a written exception notice that meets the requirements of §229.13(g)(1) or (g)(2).
4. Determine if the notice was provided within the prescribed time frames of §229.13(g)(1) or (g)(2).

Repeated Overdrafts [§229.13(d)]

1. Determine whether the financial institution has procedures or a special hold policy for customers with repeated overdrafts.
2. If yes, review the financial institution's definition for accounts "repeatedly overdrawn" and determine whether it meets the regulatory definition in §229.13(d).
3. Determine that the financial institution returns the account to the financial institution's normal account status when the account has not been repeatedly overdrawn for a six-month period following the time the account was characterized as repeatedly overdrawn.
4. Review the financial institution's overdraft account holder list.
   NOTE: this may or may not be the same overdraft list maintained in the ordinary course of business. The financial institution may maintain a list of recent overdrafts, as well as a list of customers repeatedly overdrawn.
5. Review an account classified as repeatedly overdrawn. Determine if the financial institution properly classified the account and followed the regulatory procedures outlined in §229.13(d).
6. Determine the date the account was placed in "repeated overdraft" exception status. Review account statements for the six months prior to the date the account was identified as an overdraft exception.
7. Determine whether the financial institution provided the customer with an exception notice when an exception hold was placed on the account. If so, review the content of the notice and determine if it meets the requirements of §229.13(g)(1) or (g)(3).
8. Determine if notice was given within the required time frames. [§229.12(g)(1) or (g)(3)]

Reasonable Cause to Doubt Collectability [§229.13(e)]

1. Determine if the financial institution has procedures or a special policy for placing "reasonable cause" holds.
2. If yes, determine who initiates "reasonable cause" holds.
3. Obtain a listing of accounts or checks where this exception was applied. Review the exception notice given to the customer.
4. Determine if the reason for invoking the exception was "reasonable".
5. Review the content of the notice and determine if it meets the requirements of §229.13(g)(1).
6. Determine if notice was given within the required time frames. [§229.13(g)(1)]
7. If the institution imposes a "reasonable cause" exception hold and does not provide the notice at the time of deposit, determine whether it either discloses the availability of refunds of overdraft and returned check fees, or does not assess these fees, when the requirements of §229.13(e)(2) are met.

Emergency Conditions [§229.13(f)]

1. Determine if the financial institution has procedures or a special policy for placing "emergency condition" holds. If yes, review the institution's procedures for placing these holds.
2. Determine whether the institution invokes this exception only under the conditions specified in §229.13(f).
3. Determine whether the institution makes the funds available for withdrawal within a reasonable time period from either the termination of the emergency or the period in which the deposit would normally be available for withdrawal, whichever is later.
   NOTE: a reasonable period for on-us checks is one business day. A reasonable time for local checks is five business days. For nonlocal checks, six days is usually considered reasonable). [§229.13(h)(3), 229.13(h)(4)]

Miscellaneous Provisions

Special Deposit Slips [§229.10(c)(3)]

1. Determine if the financial institution requires a special deposit slip for state or local government checks, cashier's, certified, or teller's checks in order to provide next business day availability on the deposits. [§229.10(c)(3)(i)]
2. If the financial institution requires a special deposit slip, determine that the financial institution [§229.10(c)(3)(ii)]
   - Provides the deposit slip to its customers,
   - Informs the customers how to obtain and prepare the slips, or
   - Makes the special deposit slips "reasonably available".

Additional Disclosure Requirements [§229.18]

1. Determine if the financial institution displays a notice of its availability policy in a conspicuous place at locations where employees receive consumer deposits. [§229.18(b)] *NOTE: Drive-up windows and night depositories do not require the notice.* See *commentary to §229.18(b).*
2. Determine if the financial institution displays a notice at each of its proprietary ATMs stating that the funds deposited in the ATM may not be available for immediate withdrawal. [§229.18(c)(1)]
3. If the financial institution has off-premises ATMs from which funds are not collected more than twice a week, determine if the institution discloses on or at the ATM, the days upon which the deposits made at the ATM will be considered "received". [§229.18(c)(2)]
4. Determine if the institution includes a notice on all preprinted deposit slips that the deposited funds may not be available for immediate withdrawal. [§229.18(a)]

Payment of Interest [§229.14]

1. Determine whether the financial institution pays interest as of the date of the deposit, or as of the date provisional credit is granted.
2. If the financial institution pays interest as of the date provisional credit is granted, review the financial institution's schedule for provisional credit. (This schedule may be from a Federal Reserve Bank or may be based on the time credit is generally received from a correspondent bank). Select an interest-bearing account statement and ask the financial institution to detail the interest rate calculation.
3. Review the financial institution's method for calculating interest on deposits reviewed. Select another interest-bearing account and, using the financial institution's procedures for calculating interest, verify that the financial institution accrues interest as of the date provisional credit is received.

Calculated Availability Non-consumer Transaction Accounts [§229.19(d)]

1. Determine if the financial institution uses a formula for calculating funds availability for non-consumer transaction accounts.
2. Review a copy of the financial institution's formula.
3. Select a large corporate account subject to the formula. Ask the financial institution to demonstrate how funds are made available to the customer. Determine whether it appears that the formula accurately reflects the type of deposit mix reasonably expected for this type of account holder. (For example, a local grocery store may have 90% of its deposits made up of local check deposits. Therefore, a formula providing a deposit mix of at least 90% availability within two days may be reasonable. A mail order firm, on the other hand, may have a large percent of nonlocal checks in its check deposits. Therefore, its formula may allow for lengthier availability schedules).

Record Retention [§229.21(g) and 229.13(g)(4)]

1. Determine that the financial institution retains for two years records to show compliance with this section of the regulation. Also, the bank should retain a copy of each notice provided when a "reasonable cause" exception is invoked, along with a brief description of the facts giving rise to the availability of that exception.

Examination Objectives – Part II

Subpart D

1. Determine the financial institution's compliance with Subpart D notice content and timing requirements (general consumer awareness disclosures regarding substitute checks and notices that respond to a consumer's expedited recredit claim regarding a substitute check error).
2. Ascertain whether the financial institution complies with timing requirements for acting on a substitute check expedited recredit claim.

Examination Procedures

Whether a financial institution will or will not function as a "reconverting bank",[8] the interlinked nature of the payments system virtually guarantees that every financial institution will at some time receive a substitute check that is subject to the provisions of Subpart D, the "Check 21" section of Regulation CC. While some financial institutions will rapidly migrate toward electronic check exchange, others will proceed more hesitantly. Regardless, because the Check 21 Act provides that a properly prepared substitute check is the "legal equivalent of the original check for all purposes," all banks must be prepared to *accept* a substitute check in place of the original after the Act's effective date of October 28, 2004.

One of a bank's regulatory compliance obligations will be to apprise consumer customers who receive cancelled checks with their periodic account statements or who otherwise receive substitute checks on an occasional basis of their rights under the new law through a consumer awareness disclosure. A bank that provides a substitute check to a consumer also must be prepared to comply with the Check 21 Act's expedited recredit procedure for addressing errors relating to substitute checks. Even if the customer does not receive actual cancelled checks in a monthly statement but instead receives a truncated summary, the individual may eventually receive a substitute check, either in response to a request for a check or a copy of

8 A reconverting bank is the bank that creates a substitute check; if a nonbank creates a substitute check, the reconverting bank is the first bank to transfer, present, or return the substitute check (or the first paper or electronic representation of that substitute check) for consideration.

a check or because a check that the consumer deposited was returned unpaid to the consumer in the form of a substitute check. Some increase in the potential for duplicate posting (substitute check and original) may also involve a degree of consumer education and explanation. The regulation specifies the appropriate timing for the distribution of the consumer awareness disclosure and also provides model language. Finally, institutions will likely want to train their personnel so that they can adequately convey to customers the impact of this new instrument in the payments system.

General

1. Obtain copies of the documents associated with the institution's Check 21 compliance, including but not limited to the following:
   - Consumer awareness disclosure(s)
   - Sample (test) substitute checks, *if available*
   - Direct mail correspondence, statement stuffers, etc., describing Check 21/substitute check implementation to consumer customers
   - Notices relating to expedited recredit claims:
     - Notice of valid claim and refund
     - Notice of provisional refund
     - Denial of claim
     - Reversal of refund
   - Any other relevant documents
2. Determine the individuals within the institution who may have responsibilities associated with Check 21. The following represents a non-exhaustive listing:
   - New accounts personnel
   - Employee training department
   - Internal auditors, reviewers
   - Deposit operations, bookkeeping
3. Review the financial institution's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and other similar materials.
4. Determine the training methods employed by the institution in conveying specific responsibilities to employees. Are written procedures distributed to employees?

Consumer Awareness – §229.57

NOTE: Model disclosure language is provided in Appendix C of the Regulation

Determine whether the bank distributes only a single version of its Consumer Awareness Disclosure or whether variations, depending on the circumstances giving rise to distribution, are maintained. Each notice should reflect the following:

1. *General Disclosure Content*
   Determine whether the disclosure notice states
   - That a substitute check is the legal equivalent of an original check; [§229.57(a)(1)] and
   - the consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account. [§229.57(a)(2)]
2. *Timing and Distribution*
   A bank is required to provide its consumer customers with a Consumer Awareness Disclosure prior to the receipt of a substitute check.
   - For those who receive cancelled checks with periodic statements:
     - *Existing customers as of October 28, 2004*
       Determine that the bank provided the disclosure no later than the first regularly scheduled communication with the consumer after October 28, 2004 (for each consumer who is a customer of the bank on that date). [§229.57(b)(1)(i)]
     - *New customers after October 28, 2004*
       Determine that the bank provided the disclosure at the time the customer relationship was established. [§229.57(b)(1)(ii)]
   - For those who do not receive cancelled checks with periodic statements and who will receive substitute checks on an occasional basis only
     - *Upon customer request for an original check or a copy of a check*
       Determine that the bank provide the disclosure to a consumer customer who requested an original check or a copy of a check and received a substitute check in response. [§229.57(b)(2)(i)]
     - *Upon customer's receipt of a returned substitute check*
       Determine that the bank provide the disclosure to a consumer customer of the bank who receives a returned substitute check (at the time the bank provides such substitute check). [§229.57(b)(2)(ii)]

3. *Mode of Delivery of Information* [§229.58]

Determine whether the bank employed one of the following in delivering its Consumer Awareness Disclosure(s) and expedited recredit notice(s)

- U.S. mail
- Any other means to which the recipient agreed to receive account information, including electronically

Expedited Recredit for Consumers – §229.54

1. Determine whether any financial institution customer has raised a Check 21-related claim of loss since the last examination. If yes, review for the following. [In financial institutions where multiple Check 21-related claims have been raised and resolved, the examiner need only review a sampling sufficient to ensure that the bank's processing is consistent and in compliance with Subpart D.]
   - *Necessary pre-conditions – consumer must allege **all** of these* [§§229.54(a)(1)-(4)]
     - Was the consumer's account charged for a substitute check *that was provided to the consumer*? [The consumer need not be in possession of the substitute check at the time of claim submission]
     - Was the consumer's account not properly charged? [Alternatively, a consumer's account could be properly charged yet still give rise to a warranty claim, for example, in the case of a substitute check image that is illegible.]
     - Did the consumer suffer a resulting financial loss?
     - Was the production of the original check or a sufficient copy necessary to determine whether or not the consumer's claim was valid?
   - *Procedural steps for consumer's claim*
     - Did the consumer submit a timely claim? [§229.54(b)(1)]
     - Did the claim contain a description of the claim, a statement and estimate of loss, the reason why the original check or a sufficient copy is necessary, and sufficient information for the bank to investigate? [§229.54(b)(2)]
     - If a consumer attempted to make a claim but failed to provide all of the necessary information (as listed above), did the bank inform the consumer that the claim was incomplete and identify the information that was missing? [§229.54(b)(2)(D)(ii)]
     - Was the claim submitted in a form acceptable to the financial institution? Did the bank compute the time for action accurately? [§229.54(b)(3)]
   - *Procedural steps for financial institution response*
     If the financial institution concluded that (1) all necessary prerequisites to the filing of a consumer claim existed; and (2) that the consumer followed the appropriate steps in filing the claim, verify that the bank provided the following appropriate response:

     *Claim deemed **valid**:*
     In the event of a valid consumer claim, did the bank
     - Recredit the account for the amount of the loss, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the business day after the banking day on which the bank made its determination [§229.54(c)(1)(i)];
     - Draft a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal [§229.54(e)(1)(i) and (ii)]; and
     - Send the notice no later than the business day after the banking day on which the bank recredit occurs? [§229.54(e)(1)]

     *Claim deemed **invalid**:*
     In the event of an invalid consumer claim, determine whether the bank
     - Sent a notice stating that the claim was invalid and include the original check or a sufficient copy [§229.54(e)(2)(i)];
     - Demonstrated to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)]; and
     - Included the information or documents (in addition to the original check), if any, relied upon by the bank in making its determination (or a statement that the consumer may request such) [§229.54(e)(2)(iii)].

     *Claim **not resolved** within initial 10 days, pending further investigation:*
     If the bank could not resolve the claim before the end of the 10th business day after the banking day on which the bank received the claim, determine whether the bank
     - Recredited the consumer's account for the amount of the loss, up to the lesser of the amount of the substitute check or $2,500 (plus interest, if applicable) [§229.54(c)(3)(i)(A)];
     - Drafted a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal; [§229.54(e)(1)(i) and (ii)]
     - Recredited the consumer's account for the remaining amount of the loss, if any, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the 45th calendar day after the banking day on which the bank received the claim [§229.54(c)(3)(ii)]; and
     - Sent the notice of recredit no later than the business day after the banking day on which the bank recredit occurs. [§229.54(e)(1)]

     *Claim resulting in **reversal of recredit**:*
     In some instances it may be necessary for a bank to reverse a recredit made previously to a consumer's account (plus any interest paid, if applicable). If such a circumstance has occurred, determine whether the bank

- Concluded that the consumer's claim was not valid [§229.54(c)(4)(i)];
- Drafted a notice of reversal of recredit [§229.54(e)(3)], accompanied by the following:
  - The original check or a sufficient copy [§229.54(e)(2)(i)];
  - Information or explanation to demonstrate to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)];
  - Information or documents (in addition to the original check or a sufficient copy), if any, on which the bank relied in making its determination (or a statement that the consumer can request such) [§229.54(e)(2)(iii)];
  - A description of the amount of the reversal, including both the amount of the recredit and the amount of interest paid on the recredited amount, if any, being reversed [§229.54(e)(3)(i)]; and
  - The date on which the bank made the reversal [§229.54(e)(3)(ii)].
- Sent the notice no later than the business day after the banking day on which the bank made the reversal [§229.54(e)(3)].

- *Availability of recredited funds*
  Under circumstances detailed above, where the financial institution determined that it was appropriate to recredit its consumer customer's account, determine whether the bank took the following actions:
  - Next day availability – Did the bank make any recredited amount available for withdrawal no later than the start of the business day after the banking day on which the recredit was provided? [§229.54(d)(1)]
  - Safeguard exceptions – If necessary for reasons of (1) new account status, (2) overdrawn account status, or (3) well-reasoned suspicion of fraud, did the bank invoke its right to delay immediate availability of recredited funds? If so, was the delay invoked because the bank had not yet determined the validity of the claim? Were the funds made available no later than the business day after the banking day on which the final determination was made **OR** the 45th calendar day after the bank received the claim, whichever occurred earlier? [§229.54(d)(2)]
  - Overdraft fees – If the bank chose to invoke its right to delay immediate availability of recredited funds, did it refrain from imposing an overdraft fee until the appropriate five-day period had elapsed? [§229.54(d)(3)]

References

Expedited Funds Availability Act
http://www.fdic.gov/regulations/laws/rules/6500-3240.html#6500ceb602

Part 229: Availability of Funds and Collection of Checks (FRB Regulation CC)
http://www.fdic.gov/regulations/laws/rules/6500-3210.html

FIL 116-2004: Final Amendments to the Federal Reserve Board's Regulation CC
http://www.fdic.gov/news/news/financial/2004/fil11604.html

FIL 54-2004 Check Clearing for the 21st Century Act
http://www.fdic.gov/news/news/financial/2004/fil5404.html

FIL 28-97: Availability of Funds and Collection of Checks
http://www.fdic.gov/news/news/financial/1997/fil9728.html

FIL 67-96: Delayed Availability of Funds
http://www.fdic.gov/news/news/financial/1996/fil9667.html

Job Aids

Check 21

The FDIC along with the other FFIEC member agencies has developed a computer based training package that may be used to gain familiarity with the Check 21.

This "InfoBase" is accessible through the following link to the FFIEC website: http://www.ffiec.gov/exam/check21/default.htm. It features a 30 minute audio slide presentation, frequently asked questions, and links to other resources. The slide presentation includes discussion about the examination procedures that the FDIC and other FFIEC agencies will use to evaluate compliance with Check 21.

Specific Types of Check Schedules

The flow charts on the following pages detail applicable availability schedules for deposits.

Case-By-Case Hold - The time frames listed in the flow charts are the maximum amounts of time that a bank may delay the availability of a deposit. Most banks have a policy of making funds from deposits available sooner than the time periods allowed by the regulation. These banks may, on a case-by-case basis, delay the availability of funds up to the time frames established by the regulation (those shown in the flow charts). When a bank imposes a case-by-case hold, a written notice including the following information must be given to the depositor:

1. The account number
2. The date of the deposit
3. The amount of the deposit that is being delayed; and
4. The day the funds will be available for withdrawal

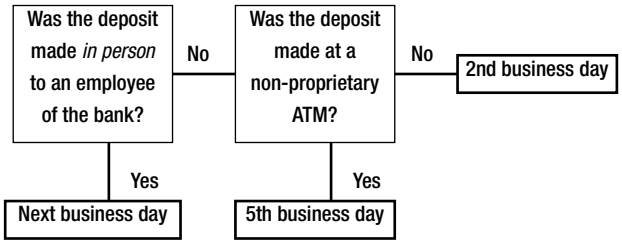
Exception Hold - Another type of hold that may be placed is an exception hold. Section 229.13 discusses the types of exceptions that are allowed. When a bank places an exception hold, a written notice must be provided to the depositor (the notice is not required for the New Account Exception). The exception hold notice must contain the same information as the case-by-case hold notice as well as the reason the exception was invoked. If a bank invokes the Emergency Conditions Exception and the emergency is not over by the time periods set forth in the flow chart for that exception, then the additional time is added once the emergency has ended.

NOTE: Exception holds do not apply to cash deposits and electronic payments.

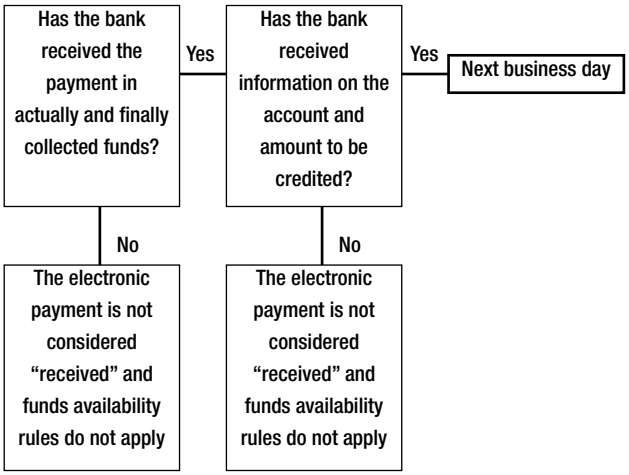
Cash Withdrawal Rule - The bank may extend by one business day the time that funds deposited in an account by certain checks are available for withdrawal by cash or similar means (including electronic payment, issuance of a cashier's or teller's check, etc.). The bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds would have been available. The flow charts show that for many deposits, the first $100 of the deposit must be given next day availability while availability of the remaining portion of the deposit may be delayed. The $400 which must be made available in accordance with the cash withdrawal rule is in addition to the funds which must be made available in accordance with the first $100 rule. The instances where the cash withdrawal rule applies are denoted with an * on the flow charts.

TIP: If a branch makes its decision for holds and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If the decision to delay availability is either centralized or made at a regional processing center and records are maintained there, sampling for compliance may be made at that location.

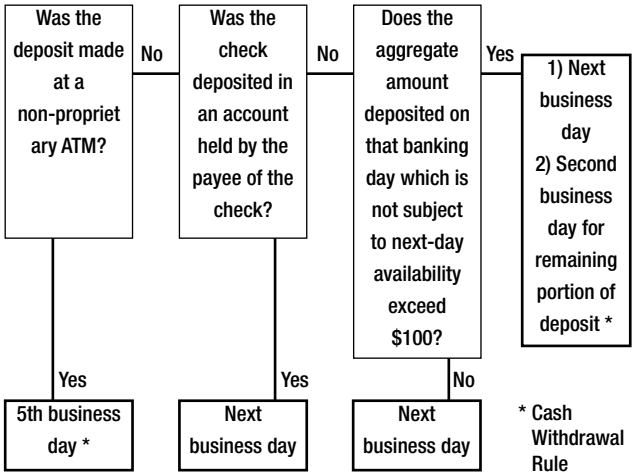
Cash



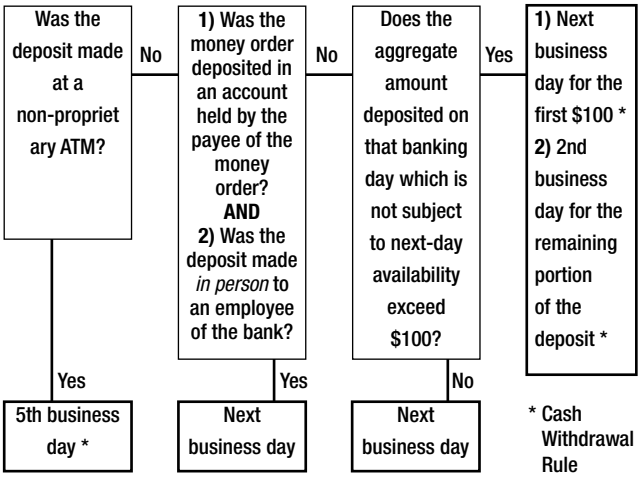
Electronic Payments



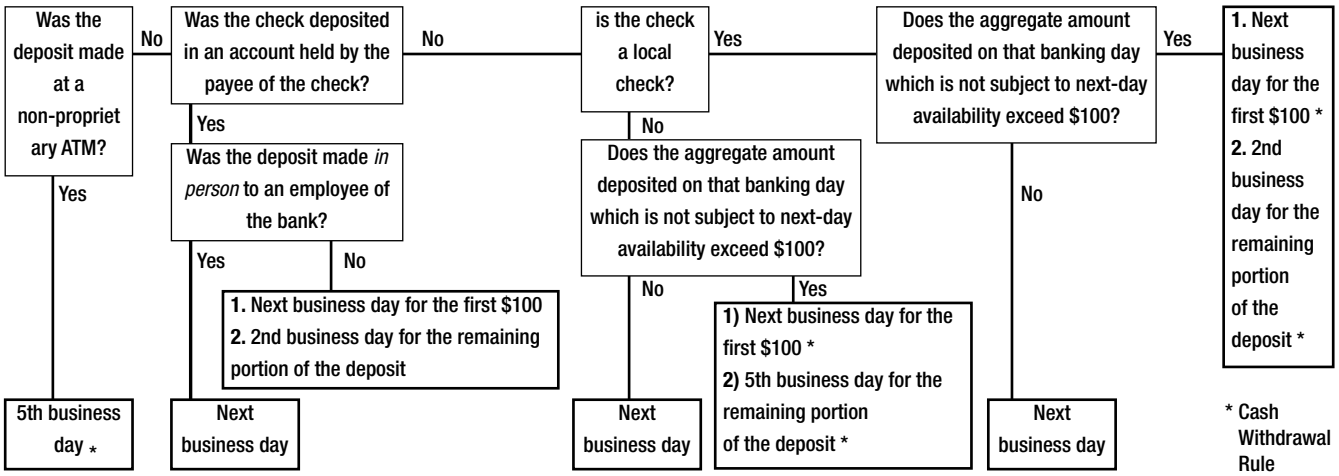
U.S. Treasury Check



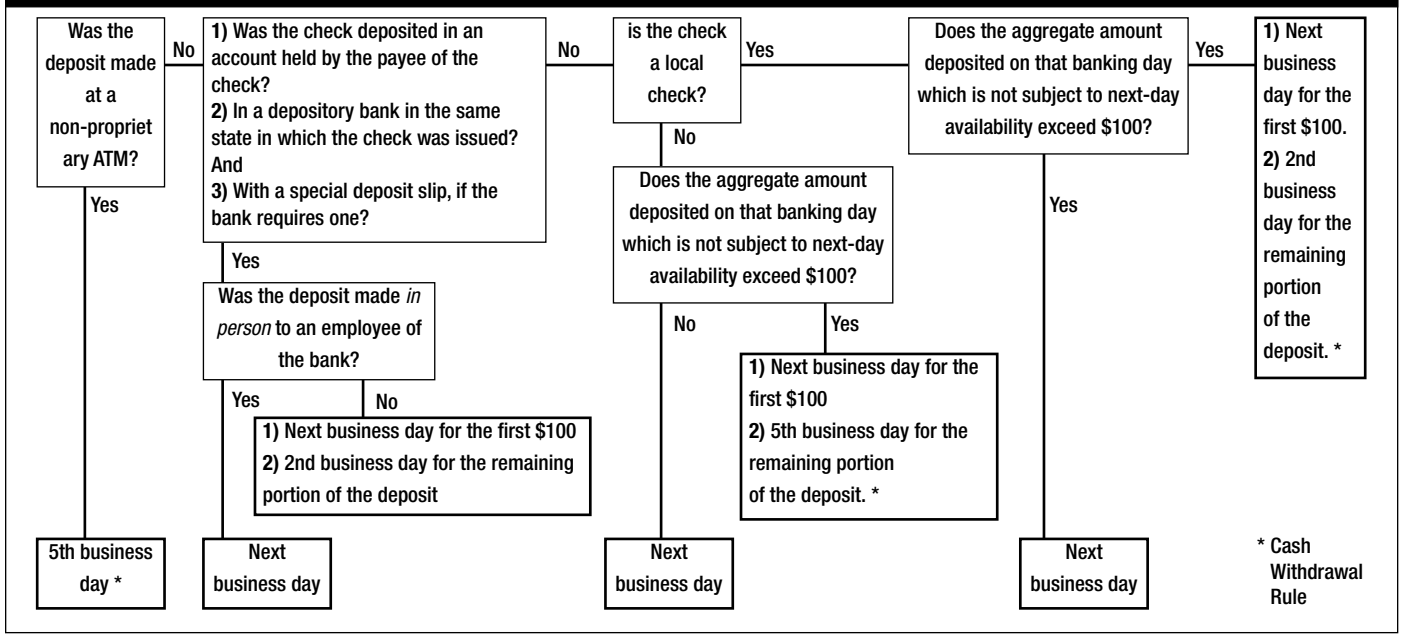
U.S. Postal Money Order



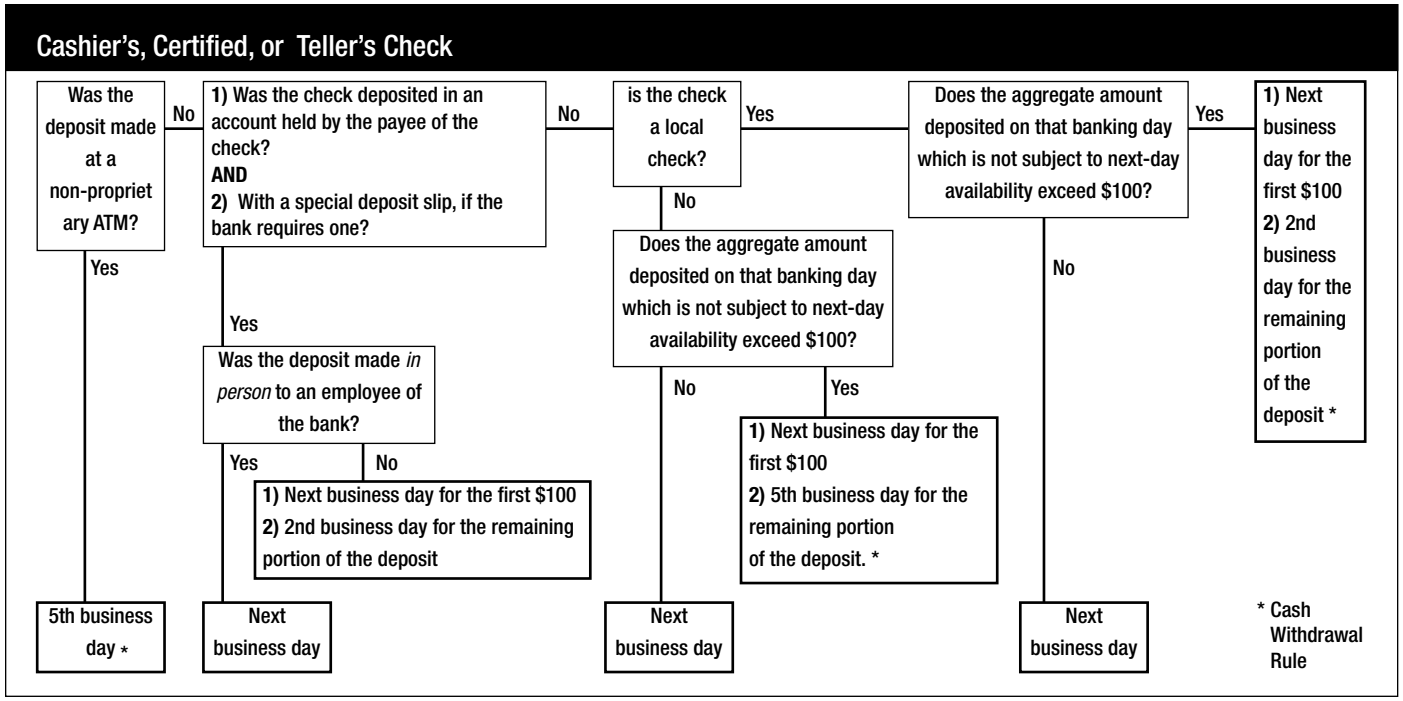
Federal Reserve Bank (FRB) or Federal Home Loan Bank (FHLB) Check



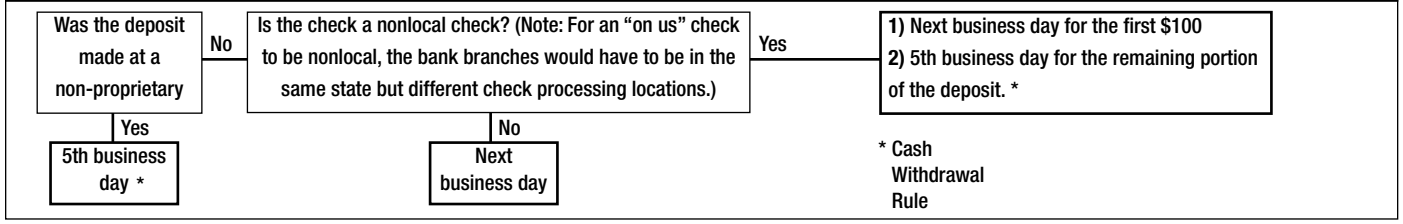
State or Local Government Check

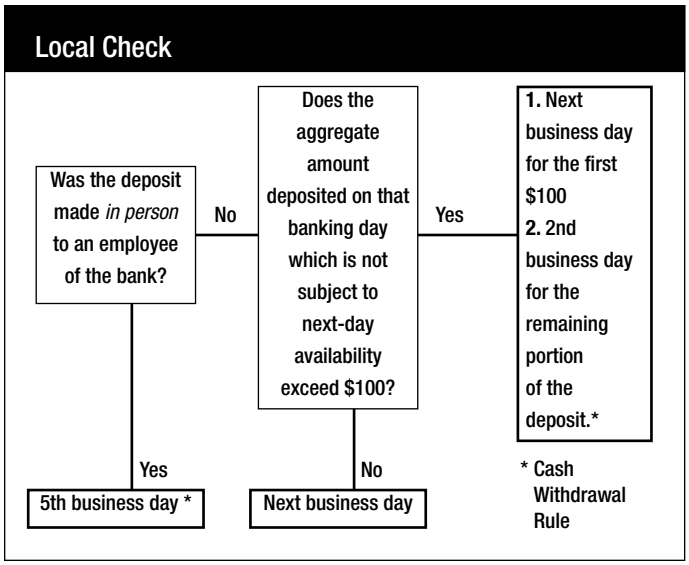


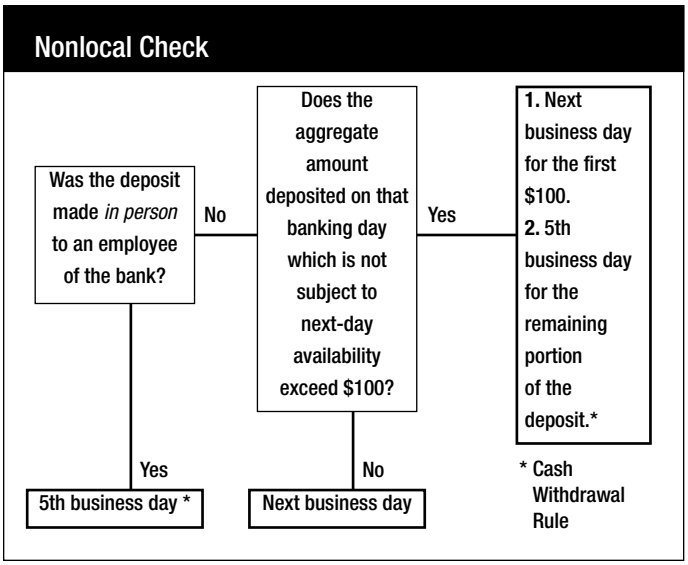
Cashier's, Certified, or Teller's Check



"On Us" Check

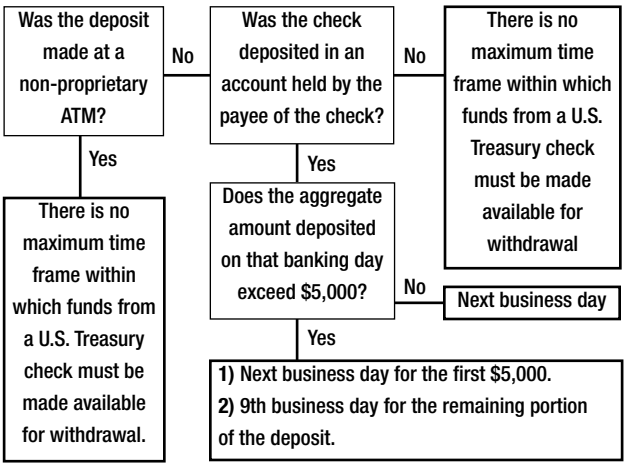



Local Check
Was the deposit made *in person* to an employee of the bank?
No
Does the aggregate amount deposited on that banking day which is not subject to next-day availability exceed $100?
Yes
1. Next business day for the first $100
2. 2nd business day for the remaining portion of the deposit.*
Yes
5th business day *
No
Next business day
* Cash Withdrawal Rule

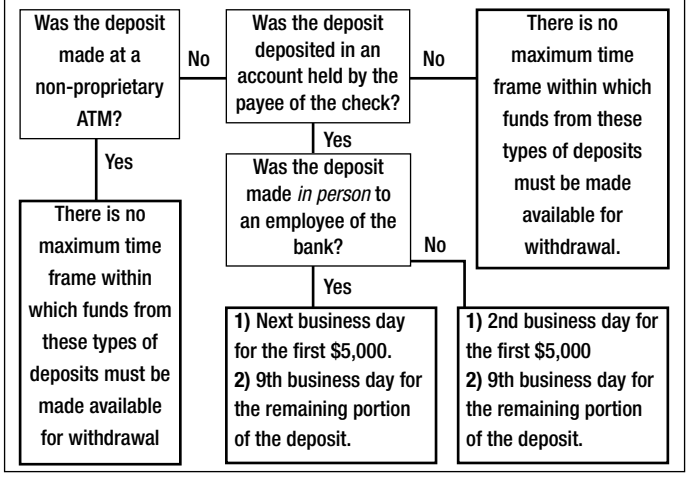

Nonlocal Check
Was the deposit made *in person* to an employee of the bank?
No
Does the aggregate amount deposited on that banking day which is not subject to next-day availability exceed $100?
Yes
1. Next business day for the first $100.
2. 5th business day for the remaining portion of the deposit.*
Yes
5th business day *
No
Next business day
* Cash Withdrawal Rule

NEW ACCOUNT EXCEPTION

U.S. Treasury Check



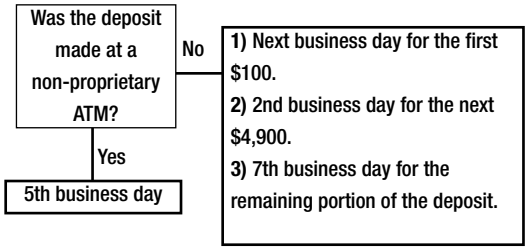
U.S. Postal Money Order, FRB or FHLB Check, State or Local Government Check, or Casier's, Certified or Teller's Check



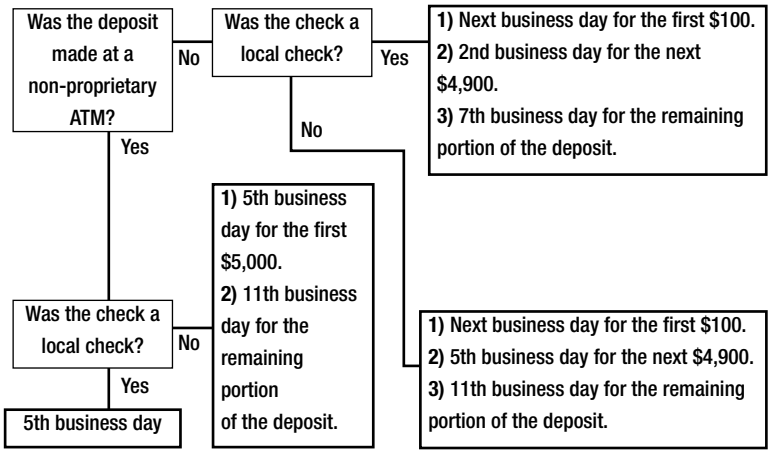
"On-Us," Local, or Nonlocal Check

LARGE DEPOSIT EXCEPTION

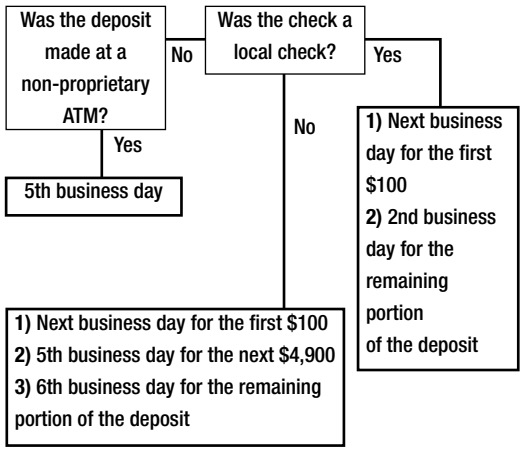
U.S. Treasury Check or U.S. Postal Money Order



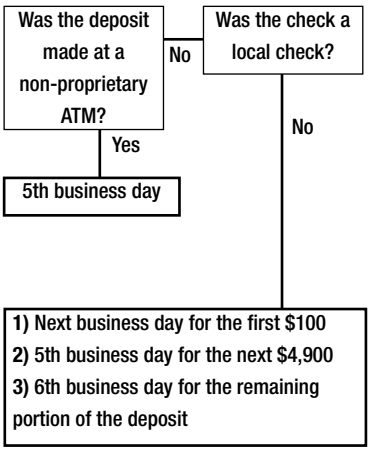
FRB or FHLB Check. State or Local Government Check, or Cashier's, Certified, or Teller's Check



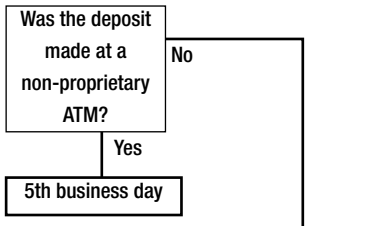
"On-Us" Check



Local Check



Nonlocal Check



(This page intentionally left blank.)

Electronic Fund Transfer Act[1]

Introduction

The Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.) was enacted on November 10, 1978, and is implemented by Federal Reserve Regulation E (12 CFR 205). The EFTA provides a basic framework establishing the rights, liabilities and responsibilities of consumers who use electronic fund transfer (EFT) services and financial institutions that offer these services. Its primary objective is the protection of individual consumers in their dealings with these services. Examples of EFTs are automated teller machine (ATM) transfers, telephone bill-payment transfers, point-of-sale transfers, preauthorized transfers from or to a consumer's account (i.e. direct deposits or withdrawals of funds), and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

As defined in the EFTA, and Section 205.3(b) of Regulation E, the term "electronic fund transfer," refers to a transaction initiated through an electronic terminal, telephone, computer, or magnetic tape that orders, instructs, or authorizes a financial institution to either credit or debit a consumer's asset account. The term electronic terminal includes point-of-sale terminals, automated teller machines, and cash dispensing machines. The consumer is usually issued a card or a code (known as an access device), or both, that may be used to initiate such transfers.

Exemptions – §205.3(c)

The following types of electronic fund transfers are ***not*** covered by the EFTA:

- Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- Check guarantee or authorization services that do not directly result in a debit or credit to a consumer's account.
- Any transfer of funds for a consumer within a system that is used primarily to transfer funds between financial institutions or businesses. An example is a wire transfer of funds for a consumer through the Fedwire or other similar network.
- Any transfer of funds which has as its primary purpose the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), purchased or sold through a brokerdealer regulated by the SEC or through a future commission merchant regulated by the CFTC, or held in book-entry form by a Federal Reserve Bank or federal agency.
- Intra-institutional automatic transfers under an agreement between a consumer and a financial institution:
  - between the consumer's account and the institution itself (except that § 205.10(e) regarding compulsory use and sections 915 and 916 of the EFTA regarding civil and criminal liability are applicable);
  - between two accounts of the consumer within the institution; or
  - from the consumer's account to a family member's account within the institution.
- Transfers initiated by telephone between a consumer and a financial institution making the transfer and does not take place under a telephone, bill payment, or other plans contemplating periodic or recurring transfers.
- Preauthorized transfers to or from an account held at a financial institution with assets of $100 million or less on the preceding December 31 (except that § 205.10(e) and sections 915 and 916 of the EFTA are applicable).

Special Requirements – §205.4

Section 205.4(a) requires that disclosures be clear and readily understandable, in writing, and in a form the consumer may keep.

Section 205.4(b) permits, at the institution's option, the disclosure of additional information, and allows disclosures required by other laws (for example, Truth in Lending disclosures) to be combined with Regulation E disclosures.

Section 205.4(d)(1) permits the institution holding an account to combine required disclosures into a single statement if a consumer holds two or more accounts at an institution. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. In order to comply with Section 205.4(d)(2), an institution need provide only one set of disclosures for a joint account.

Section 205.4(e) permits two or more institutions that jointly provide EFT services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. When making disclosures under Section 205.7 (Initial Disclosures) and Section 205.8 (Change in Terms; Error Resolution Notice), an institution in a shared system need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

Issuance of Access Devices – §205.5

Section 205.5 governs the issuance of access devices. For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit

1 This section fully incorporates the examination procedures issued under DCA RD Memo 98-001: Electronic Fund Transfer Act (Regulation E) Examination Procedures.

feature, for example, one permitting direct extensions of credit that do not involve the asset account. In general, an institution may issue an access device to a consumer only if:

- it is requested (in writing or orally) or applied for; or
- it is a renewal of, or in substitution for, an accepted access device (as defined in § 205.2(a)).

An institution may issue an access device to each account holder (on a joint account) for whom the requesting holder specifically requests an access device.

An institution may issue an unsolicited access device only if the following four conditions are satisfied:

1. the access device is not validated, meaning, the device is not yet activated;
2. the access device is accompanied by the explanation that it is not validated and of how it may be disposed of if the consumer does not wish to validate it;
3. the access device is accompanied by a complete disclosure, in accordance with § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and
4. the access device is validated only upon oral or written request from the consumer and after a verification of the consumer's identity by some reasonable means.

These conditions are intended to reduce the potential for unauthorized use if the access device is lost or stolen en route to the consumer and to ensure that the consumer is informed of account terms and conditions before deciding whether to accept the responsibilities of having an access device.

Liability of Consumers for Unauthorized Transfers – §205.6

A consumer may be held liable for unauthorized EFTs (as defined in § 205.2(m)) only if:

- the institution has provided the following written disclosures to the consumer:
  - a summary of the consumer's liability for unauthorized EFTs;
  - the telephone number and address for reporting that an unauthorized EFT has been or may be made; and
  - the institution's business days.
- the access device is accepted (as defined in § 205.2(a)); and
- the institution has provided a means to identify the consumer to whom the access device was issued.

Consumer Liability for Unauthorized Transfers:
Electronic Fund Transfer Act–Regulation E (12 CFR 205.6)

Event	Timing of consumer notification of bank	Maximum liability
Loss or theft of access device[1]	Within two business days after learning of loss or theft.	Lesser of $50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft.	Lesser of $500, OR the sum of: (a) $50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less, AND (b) the amount of unauthorized transfers occurring after two business days and before notice to the institution.[2]
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of $500, OR the sum of: (a) lesser of $50 or the amount of unauthorized transfers in first two business days, AND (b) the amount of unauthorized transfers occurring after two business days. For transfers occurring after the 60-day period, unlimited liability (until the institution is notified).[3]
Unauthorized transfer(s) appearing on periodic statement (no use of access device)	Within 60 calendar days after transmittal of the periodic statement.	No liability.
Unauthorized transfer(s) appearing on periodic statement (no use of access device)	More than 60 calendar days after transmittal of the periodic statement showing first unauthorized transfer.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the institution.

1 Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.

2 Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

3 Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

Section 205.6(b)(4) states that if a consumer's delay in notifying an institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified above shall be extended to a reasonable time. Also, Section 205.6(b)(6) provides that if any lesser liability limits are imposed by applicable state law or by an agreement with the consumer, those limits shall apply instead of the limits set by this section.

These liability provisions apply to unauthorized EFTs initiated by a combined access devicecredit card, including an access device with overdraft privileges. These provisions do not apply to the unauthorized use of a combined access device-credit card when no EFTs are involved (for example, when the card is used to draw cash advances directly from a credit line).

Notice to an institution about unauthorized use is considered given when the consumer takes whatever steps are reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee actually receives the information. At the consumer's option, notice may be given in person, by telephone, or in writing. Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the institution. Notice may also be considered given when the institution becomes aware of circumstances that indicate an unauthorized transfer has been or may be made.

Initial Disclosure of Terms and Conditions – §205.7

The institution must provide the consumer with the following disclosures, in written, retainable form, before the first EFT is made or at the time the consumer contracts for an EFT service:

- a summary of the consumer's liability under Section 205.6 or other applicable law or agreement;
- the telephone number and address of the person or office to notify in the event of loss or unauthorized use;
- the institution's business days;
- types of EFTs the consumer may make and any limitations on the frequency and dollar amount of transfers (the details of the limitations may be withheld if the security of the system requires confidentiality);
- any charges for EFTs or for the right to make EFTs;
- a summary of the consumer's right to receive documentation of EFTs as provided in Sections 205.9, 205.10(a) and 205.10(d);
- a summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for initiating a stop-payment order;
- a summary of the institution's liability for its failure to make or stop certain transfers;
- the circumstances under which the institution in the ordinary course of business will disclose information concerning the consumer's account to third parties; and
- a notice which is substantially similar to the notice in Appendix A of 12 CFR 205 concerning error resolution procedures and the consumer's rights under them.

Change in Terms; Error Resolution Notice – §205.8

If a change in terms is contemplated, the institution must mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(b) if the change would result in any of the following:

- increased fees or charges;
- increased liability for the consumer;
- fewer types of available EFTs; or
- stricter limitations on the frequency or dollar amounts of transfers.

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, prior notice need not be given by the institution. However, if such a change is to be permanent, the institution must provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosures would jeopardize the security of the system or account.

For accounts to or from which EFTs can be made, an error resolution notice (as set forth in 12 CFR 205 Appendix A – Model Form A-3) must be mailed or delivered to the consumer at least once each calendar year. Alternatively, an abbreviated error resolution notice substantially similar to the notice set out in Appendix A (Model Form A-3) may be included with each periodic statement.

Documentation of Transfers – §205.9

Receipts given at electronic terminals are required to provide specific documentation. The receipt must be made available at the time the transfer is initiated at an electronic terminal and must include, as applicable:

- amount of the transfer – a charge for making the transfer may be included in the amount if the terminal is owned or operated by an entity other than the institution that holds the consumer's account, provided the charge is disclosed on the receipt and on a sign posted on or at the terminal;
- date – the date the consumer initiates the transfer;
- type of transfer and type of account – descriptions such as "withdrawal from checking" or "transfer from savings to checking" are appropriate. This is true even if the accounts are only similar in function to a checking account (such as a share draft or NOW account) or a savings account (such as a share account). If the access device used can only access one account, the type-of-account requirement does not apply;
- a number or code identifying the consumer's account(s), or the access device used to initiate the transfer. The number and code need not exceed four digits or letters to comply;
- location of the terminal – the location where the transfer is initiated may be given in the form of a code or terminal number; and
- the name of any third party to or from whom funds are transferred – a code may be used to identify the party, but only if the code is explained on the receipt. This

requirement does not apply if the name of the party is provided by the consumer in a manner the terminal cannot duplicate on the receipt, such as on a payment stub.

An electronic terminal receipt need not be provided for electronic transfers initiated by home banking equipment.

Section 205.9(b) provides the documentation requirements for periodic statements. Periodic statements must be sent monthly if an EFT has occurred, or quarterly if no EFT has occurred. For each EFT made during the cycle, the statement must include, as applicable:

- amount of the transfer – if a charge was imposed at an electronic terminal by the owner or operator of the terminal, that charge may be included in the amount;
- date the transfer was posted to the account;
- type of transfer(s) and type of account(s) to or from which funds were transferred;
- for each transfer (except deposits to the consumer's account) initiated at an electronic terminal, the location that appears on the receipt. If an identification code was used, that identification code must be given with one of the following descriptions:
  - street address of the terminal and the city, state, or foreign country;
  - a generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of an institution), and the city, state, or foreign country; or
  - name of the entity (except the institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country;
- the name of any third party payee or payor;
- the account number(s);
- the total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, the right to make EFTs, or for account maintenance;
- the balance in the account at the beginning and close of the statement period;
- the address and telephone number to be used by the consumer for inquiries or notice of errors. If the institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document; and
- if the institution has provided a telephone number which the consumer can use to find out whether or not a preauthorized transfer has taken place, that telephone number.

Where a consumer's passbook may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement need not be sent, provided that the financial institution updates the consumer's passbook or provides the required information on a separate document at the consumer's request. To update the passbook, the amount and date of each EFT made since the passbook was last presented must be listed.

If the consumer has a non-passbook account that may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement must be sent at least quarterly.

Preauthorized Transfers – §205.10

Section 205.10(a)(1) covers preauthorized transfers to a consumer's account. This section requires that, when an account is scheduled to be credited by a preauthorized EFT from the same payor at least once every 60 days, some form of notice must be provided to the consumer so that the consumer can find out whether or not the transfer occurred.

The notice requirement will be satisfied by the payor's providing notification to the consumer that the transfer has been initiated. If the payor does not provide notice to the consumer, the burden is on the institution to adopt one of the three alternative procedures for supplying the notice.

1. The institution can choose to give the consumer oral or written notice every time a preauthorized transfer occurs or fails to occur.
2. The second alternative is that the institution can notify the consumer within 2 business days after the preauthorized transfer occurred.
3. As a third alternative, the institution can establish a telephone line that the consumer may call to find out whether a preauthorized transfer has occurred. The telephone number must be disclosed on the initial disclosures and on each periodic statement. The telephone line must be "readily available" so that consumers calling to inquire about transfers are able to have their calls answered with little difficulty. In addition, it is expected that these telephone notice systems will be designed so that consumers do not have to bear the cost of long distance calls within the institution's service area to inquire about their transfers. Therefore, a multi-branch institution with a statewide customer base could provide consumers with either a toll-free number or designate local numbers for different communities within the state.

Section 205.10(a)(3) requires an institution that receives a preauthorized transfer to credit the consumer's account as of the day the funds are received.

Section 205.10(b) states that preauthorized transfers from a consumer's account may only be authorized by the consumer in writing, signed or similarly authenticated by the consumer. Written authorizations include electronic authorizations (such as via a home banking system) which are similarly authenticated by the consumer as long as there are means to identify the consumer (such as a security code) and to make available a paper copy of the authorization (automatically or upon request). In all cases, the party that obtains the authorization from the consumer must provide a copy to the consumer.

Section 205.10(c) gives the consumer the right to stop payment of a preauthorized transfer from an account. The consumer must notify the institution orally or in writing at any time up to three business days before the scheduled date of the transfer. The institution may require written confirmation of an oral stop payment order to be made within 14 days of the consumer's oral notification. However, the institution may only impose the written confirmation requirement if, at the time the consumer made the oral stop payment order, the institution informed the consumer that written confirmation is required and told the consumer the address to which the confirmation should be sent. If the consumer fails to provide the written confirmation, the oral stop payment order ceases to be binding after 14 days.

Section 205.10(d) deals with a preauthorized transfer from a consumer's account that varies in amount from the previous transfer under the same authorization or the preauthorized amount. In the event such a transfer is scheduled to occur, the institution or designated payee must mail or deliver to the consumer a written notice, at least 10 days before the scheduled transfer date, containing the amount and scheduled date of the transfer. However, if the institution or the payee informs the consumer of the right to receive advance notice of varying transfers, the consumer may elect to receive notice only when the amount varies from the most recent transfer by more than an agreed upon amount or when it falls outside a specified range.

Section 205.10(e) prohibits the institution from conditioning an extension of credit on the condition of repayment by means of preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. The section also prohibits anyone from requiring the establishment of an account for receipt of EFTs with a particular institution either as a condition of employment or the receipt of a government benefit.

Procedures for Resolving Errors – §205.11

Section 205.11 sets forth the definition of "error", the steps the consumer must take when alleging an error in order to receive the protection of the EFTA and Regulation E, and the procedures that an institution must follow to resolve an alleged error.

Section 205.11(a), defines the term "error" to mean:

- an unauthorized EFT;
- an incorrect EFT to or from the consumer's account;
- the omission from a periodic statement of an EFT to or from the consumer's account that should have been included;
- a computational or bookkeeping error made by the institution relating to an EFT;
- the consumer's receipt of an incorrect amount of money from an electronic terminal;
- an EFT not identified in accordance with the requirements of Sections 205.9 or 205.10(a); or
- a consumer's request for any documentation required by Sections 205.9 or 205.10(a), or for additional information or clarification concerning an EFT.

The term "error" does not include a routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes.

A notice of error is an oral or written notice indicating why the consumer believes an error exists that is received by the institution not later than 60 days after a periodic statement or other documentation which first reflects the alleged error is provided. The notice of error must also enable the institution to identify the consumer's name and account number, and, to the extent possible, the type, date and amount of the error. An institution may require a consumer to give written confirmation of an error within 10 business days of giving oral notice. The institution shall provide the address where confirmation must be sent. If written confirmation is not received, the institution must still comply with the error resolution procedures, but it need not provisionally credit the account if it takes longer than 10 business days to resolve the matter.

After receiving a notice of error, the institution is required to promptly investigate the alleged error and transmit the results to the consumer within 10 business days. As an alternative to this, the institution may take up 45 calendar days to complete its investigation provided it:

- provisionally credits the funds (including interest, where applicable) to the consumer's account within the 10 business-day period;
- advises the consumer within 2 business days of the provisional crediting; and

- gives the consumer full use of the funds during the investigation.

An institution need not provisionally credit the account if:

- the consumer fails to provide the required written confirmation of an oral notice of an error; or
- the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (12 CFR 220).

If, after investigating the alleged error, the institution determines that an error has occurred, it shall promptly (within one business day after such determination) correct the error, including the crediting of interest (if applicable). The institution shall provide within three business days of the completed investigation an oral or written report of the correction to the consumer and, as applicable, notify the consumer that the provisional credit has been made final.

If the institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the institution must mail or deliver a written explanation of its findings within three business days after concluding its investigation. The explanation must include a notice of the consumer's rights to request the documents upon which the institution relied in making its determination.

Upon debiting a provisionally credited amount, the institution shall notify the consumer of the date and amount of the debit, of the fact that the institution will honor (without charge) checks, drafts or similar paper instruments payable to third parties and preauthorized debits for five business days after transmittal of the notice. The institution need honor only items that it would have paid if the provisionally credited funds had not been debited. Upon request from the consumer, the institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination.

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 and 45 days, to 20 and 90 days, respectively.

If the notice of error involves a transaction that was not initiated in a state or resulted from a point-of-sale debit card transaction, the 45-day period is extended to 90 days.

Relation to State Law – §205.12

Section 205.12 sets forth the relationship between the EFTA and the Truth in Lending Act (TILA) with regard to the issuance of access devices, consumer liability, and investigation of errors. This section also provides standards for determination and procedures for applying for state exemptions.

The EFTA governs:

- the issuance of debit cards and other access devices with EFT capabilities;
- the addition of EFT features to credit cards; and
- the issuance of access devices whose only credit feature is a pre-existing agreement to extend credit to cover account overdrafts or to maintain a minimum account balance.

The TILA governs:

- the issuance of credit cards as defined in Regulation Z, 12 CFR 226.2(a)(15);
- the addition of a credit feature to a debit card or other access device; and
- the issuance of dual debit/credit cards except for access devices whose only credit feature is a pre-existing agreement to cover account overdrafts or to maintain a minimum account balance.

The EFTA and Regulation E preempt inconsistent state laws, but only to the extent of the inconsistency. The Federal Reserve Board is given the authority to determine whether or not a state law is inconsistent. An institution, state, or other interested party may request the Board to make such a determination. A state law will not be deemed inconsistent if it is more protective of the consumer than the EFTA or Regulation E. Upon application, the Board has the authority to exempt any state from the requirements of the Act or the regulation for any class of EFTs within a state with the exception of the civil liability provision.

Administrative Enforcement – §205.13 and §917

Section 917 specifically directs the federal financial institution supervisory agencies to enforce compliance with the provisions of the EFTA.

Institutions are required to maintain evidence of compliance with the EFTA and Regulation E for a period of not less than two years. This period may be extended by the agency supervising the institution. It may also be extended if the institution is subject to an action filed under Sections 910, 915 or 916(a) of the EFTA which generally apply to the institution's liability under the EFTA and Regulation E. Persons subject to the EFTA who have actual notice that they are being investigated or subject to an enforcement proceeding must retain records until disposition of the proceeding. Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

Services Offered by Provider Not Holding Consumer's Account – §205.14

This section applies in limited situations where the institution provides EFT services and issues access devices, but does

not hold the asset account and no agreement exists between the service provider and the account at the institution. The transfers initiated by the service-providing institution are often cleared through an automated clearinghouse (ACH). This section divides the responsibilities between the two institutions with the greater responsibility placed on the service-providing institution.

The responsibilities of the service-providing institution are set forth in Section 205.14(b)(1) and (2). The duties of the account-holding institution are found in Section 205.14(c)(1) and (2).

Electronic Fund Transfer of Government Benefits – §205.15

Section 205.15 contains the rules that apply to electronic benefit transfer (EBT) programs. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Section 205.15(a) provides that a government agency is deemed to be a financial institution and subject to the regulation, if it directly or indirectly issues an access device to a consumer for use in initiating an EFT of government benefits from an account. Needs-tested EBT programs established under state or local law or administered by a state or local agency (such as food stamp programs) are exempt. Federally administered EBT programs and state and local employment-related EBT programs (such as retirement and unemployment benefits) remain covered by Regulation E. The term account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or point-of-sale terminals.

A government agency need not furnish the periodic statement required by §205.9(b) if the agency makes available to the consumer:

- the consumer's account balance through a readily available telephone line and at a terminal; and
- a written history of the consumer's account transactions that covers at least 60 days preceding the date of the consumer's oral or written request.

A government agency that does not furnish periodic statements in accordance with the above shall be subject to special modified requirements as set forth in §205.15(d).

Disclosures at Automated Teller Machines - §205.16

Section 205.16 requires disclosures at ATMs, before a fee can be charged to the consumer. This applies when a consumer uses an ATM that is operated by a financial institution or other company that does not hold the consumer's account.

In these cases, the operator of the ATM must disclose the fact that a fee will be charged for providing EFT services or a balance inquiry, AND the amount of the fee. The ATM operator may post this information in prominent and conspicuous location on or at the ATM. Alternatively, the operator may provide the notice on the ATM screen or on paper, before the consumer is obligated to pay a fee.

An ATM operator may only impose a fee on a consumer initiating an EFT service or balance inquiry if the consumer is provided with the required notices AND elects to continue the transaction after receiving the notice.

Requirements for Electronic Communications - §205.17

Section 205.17 contains the rules for electronic delivery of required disclosures, when consumers have consented to receive them electronically. A financial institution that delivers disclosure electronically has two options under the regulation. The financial institution must:

1. Send the disclosure to the consumer's electronic address; or
2. Make the disclosure available at another location such as an Internet web site; AND
   i. Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web sit or other location where the disclosure is available; and
   ii. Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

When a disclosure provided by an electronic means is returned to a financial institution as undeliverable, the financial institution shall take reasonable steps to attempt redelivery using information in its files.

Suspension of Obligations – §912; Waiver of Rights – §914

Section 912 suspends, under certain conditions, a consumer's obligation to another person in the event a malfunction in an EFT system prevents payment to the person, until the malfunction is corrected and the EFT may be completed.

Section 914 states that no writing or other agreement between a consumer and any other person may contain any provision that constitutes a waiver of any right conferred or cause of action created by the EFTA. However, Section 914 does not prohibit any writing or other agreement that grants a consumer greater protection or a more extensive right or remedy than that provided by the EFTA or a waiver agreement to settle a dispute or action.

Liability of Financial Institutions – §910; Civil Liability – §915; Criminal Liability – §916

Section 910 provides that institutions subject to the EFTA are liable for all damages proximately caused by failure to make an EFT in accordance with the terms and conditions of an account, in a timely manner, or in the correct amount, when properly instructed to do so by a consumer. However, Section 910 also sets forth certain exceptions when an institution would not be liable for failing to make an EFT. Section 910 also provides that institutions are liable in certain circumstances for failure to make an electronic fund transfer due to insufficient funds and failure to stop payment of preauthorized debits.

A financial institution may also be liable for civil damages if it fails to comply with the EFTA. The civil liability provisions are found in §915. The damages an institution would have to pay in a successful individual action are actual damages and statutory damages between $100 and $1,000, as determined by the court. In a successful class action suit, the institution would have to pay actual damages and statutory damages up to the lesser of $500,000 or 1% of the institution's net worth. In both successful individual and class actions, court costs and a reasonable attorney's fee would be recovered by the consumer.

The institution generally will not be liable for violations caused by unintentional bona fide errors that occurred despite the maintenance of procedures reasonably adopted to avoid such errors. Also, the institution will not be liable if it acted in accordance with an official interpretation issued by the Board of Governors of the Federal Reserve System or its authorized staff. An institution cannot be held liable for improper disclosure if it utilized in an appropriate manner a model clause approved by the Board of Governors. Further, an institution can avoid liability by notifying the consumer of a violation, taking corrective action, including adjustment to the consumer's account and payment of appropriate damages prior to a court case.

Section 916 sets forth provisions for criminal liability. Penalties under these provisions run from a $5,000 fine or imprisonment of not more than one year, or both, for knowing and willful failures to comply with the EFTA, up to a $10,000 fine or imprisonment of not more than ten years, or both, for the fraudulent use of a debit card.

Examination Objectives

1. To determine that the institution has procedures in place to ensure compliance with the Electronic Fund Transfer Act.
2. To determine that the institution is in compliance with the provisions of the Electronic Fund Transfer Act.

Examination Procedures

1. Determine if access devices contain credit privileges in order to evaluate compliance with applicable portions of Truth in Lending. [§205.12(a)]
2. Obtain and review copies of the following:
   a. Disclosure forms.
   b. Account agreements.
   c. Procedural manuals and written policies.
   d. Merchant agreements.
   e. Automated teller machine receipts and periodic statements.
   f. Error resolution statements/files.
   g. Form letters used in case of errors or questions concerning an account.
   h. Any agreements with third parties allocating compliance responsibilities.
   i. Consumer complaint file.
3. Test for compliance with written policies and internal controls while performing the examination procedures.
4. For each type of EFT service provided, review items given to customers at the time an account is opened, or prior to the first EFT transaction, to determine that all required disclosures are furnished. [§205.7]
5. If the institution has changed the terms or conditions since the last examination that required a written notice to the customer, determine that the proper notice was provided in a timely manner. [§205.8(a)]
6. Review a sample of periodic statements to determine that they contain sufficient information for the consumer to adequately identify transactions and that they otherwise comply with regulatory requirements. [§205.9]
7. Review consumer complaints regarding EFT transactions to determine compliance with the error resolution procedures and to isolate any apparent deficiencies in the institution's operations. [§205.11]
8. Review policies regarding liability for unauthorized transfers. [§205.6]

9. Verify that the policies comply with the regulation, and determine whether they are applied in practice.
10. Review policies regarding issuance of access devices, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. [§205.5]
11. Review policies regarding preauthorized debits and credits, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. [§205.10]
12. Verify that the financial institution does not require compulsory use of EFTs, except as authorized. [§205.10(e)]
13. Determine that the financial institution is maintaining records of compliance for a period of not less than two years from the date disclosures are required to be made or action is required to be made. [§205.13(b)
14. Determine that appropriate disclosures are provided to non-customer consumers if fees will be imposed for EFT services at ATMs operated by the bank.
15. If the institution provides required disclosures electronically, determine that the institution's delivery method(s) comply with the electronic delivery provisions of the regulation.

Examination Checklist—Electronic Fund Transfer Act

A. Section 205.5–Issuance of Access Devices	Yes	No
1. Does the institution issue validated access devices only:		
a. In response to requests or applications [§205.5(a)(1)]; or,		
b. As a renewal or substitution for an accepted access device [§205.5(a)(2)]; or		
2. Does the institution issue unsolicited access devices only when the devices are:		
a. Not validated [§205.5(b)(1)]; and,		
b. Accompanied by an explanation that the device is not validated, and how to dispose of the device if the customer does not want it [§205.5(b)(2)]; and,		
c. Accompanied by the required disclosures, [§205.5(b)(3)]; and,		
d. Validated only on consumer request and after proper identification is made? [§205.5(b)(4)]		
3. Does the institution verify the consumer's identity by a reasonable means (such as by photograph, personal visit, or signature)? [§205.5(b)(4)]		
B. Section 205.6–Liability of Consumer for Unauthorized Transfers		
1. Does the institution impose liability on the consumer for unauthorized transfer only:		
a. If an accepted access device is used [§205.6(a)]; and,		
b. If the institution has provided a means to identify the consumer to whom it was issued; and,		
c. If the institution has provided the disclosures required by Section 205.7(b)(1) (2) and (3).		
2. Does the institution NOT use negligence of the consumer as a basis for greater liability than is permissible under Regulation E? [Official Staff Commentary §205.6(b)]		
3. Is the consumer's liability for unauthorized use of a lost or stolen access device limited to the lesser of $50 or actual loss if the consumer notifies the institution within two business days of discovery of loss or theft of the access device? [§205.6(b)(1)]		
4. If the consumer fails to notify the institution of loss or theft of an access device within two business days of discovery of loss or theft, is consumer liability limited to $500, as follows: [§205.6(b)(2)]		
a. The lesser of $50 or actual loss within the first two business days; and,		
b. Unauthorized transfer amounts that occur after the two business days and before notification (provided the institution proves these unauthorized transfers could have been prevented had notification within the two business days occurred)?		

	Yes	No
5. If a consumer fails to notify the institution of an unauthorized transfer within 60 days of transmittal of the periodic statement upon which that transfer appears, is consumer liability limited to: [§205.6(b)(3)]		
a. The lesser of $50 or actual loss that appears on the statement or occurs during the 60 day period; and,		
b. The amount of unauthorized transfers that occur after the close of 60 days and before notice to the institution (provided the institution proves that the unauthorized transfers could have been prevented had notification occurred within the 60 days)?		
C. Section 205.7–Initial Disclosures		
1. Does the institution make the following disclosures:		
a. A summary of the consumer's liability under §205.6 (or lesser liability under state law or agreement)? [§205.7(b)(1)]		
b. The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made? [§205.7(b)(2)]		
c. The institution's business days, as determined under §205.2(d)? [§205.7(b)(3)]		
d. The type of EFTs that the consumer may make and any limitations on the frequency and dollar amount of transfer? [§205.7(b)(4)] (If details on the limitations on frequency and dollar amount of transfers are essential to maintain the security of the system, they need not be disclosed.)		
e. Any charges for EFTs or for the right to make transfers? [§205.7(b)(5)]		
f. A summary of the consumer's right to receive documentation of EFTs, as provided in §205.9, 205.10(a), and 205.10(d)? [§205.7(b)(6)]		
g. A summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for initiating a stop-payment order, as provided in §205.10(c)? [§205.7(b)(7)]		
h. A summary of the institution's liability to the consumer for its failure to make or to stop certain transfers under §910 of the Act? [§205.7(b)(8)]		
i. Circumstances under which the institution in the ordinary course of business will disclose information to third parties concerning the consumer's account? [§205.7(b)(9)]		
j. An error resolution notice meeting the requirements of §205.7(b)(10)?		
D. Section 205.8–Change in Terms; Error Resolution Notice		
1. Has the institution made any changes in a term or condition since the last examination that required a written notice to a consumer? The change would need to result in: increased fees, increased liability for the consumer, fewer types of EFTs available, and stricter limitations on the frequency or dollar amounts of transfers. [§205.8(a)]		
a. If so, was the notice provided at least 21 days before the effective date of such change? [§205.8(a)]		

	Yes	No
2. Does the institution provide either the long form error resolution notice at least once every calendar year or the short form error resolution notice on each periodic statement? [§205.8(b)		
E. Section 205.9—Receipts at Electronic Terminals; Periodic Statements		
1. Does the institution make a receipt available to the consumer, in a retainable form, at the time an EFT is initiated? [§205.9(a)]		
2. Does the receipt contain the following items as applicable: [§205.9(a)]		
a. The amount of the transfer (amount may be combined with any transfer charge if certain conditions are met)? [§205.9(a)(1)]		
b. The calendar date the transfer was initiated? [§205. 9(a)(2)]		
c. The type of transfer and account to or from which funds are transferred? (Transactions are exempt from the type-of-account requirement if the access device used can only access one account.) [§205.9(a)(3)]		
d. A number or code that identifies one of the following:		
i. the consumer's account, or		
ii. the access device used? [§205.9(a)(4)] *NOTE: The number or code need not exceed four digits or letters to comply.*		
e. Identification or location of the terminal? [§205.9(a)(5)]		
f. The name of any third party to or from whom funds are transferred unless the name is provided in a non-machine readable form? [§205.9(a)(6)]		
3. Does the institution mail or deliver a periodic statement for each monthly or shorter cycle in which an EFT has occurred? [§205.9(b)]		
4. If no EFTs have occurred, has the institution mailed or delivered a periodic statement at least quarterly for non-passbook accounts? [§205.9(b)]		
5. Does the periodic statement or accompanying documents contain the following items: [§205.9(b)(1)]		
a. The amount of the transfer (amount may include transfer charge if it was added in accordance with the terminal receipt requirements); [§205.9(b)(1)(i)]		
b. The date the transfer was posted to the account; [§205.9(b)(1)(ii)]		
c. The type of transfer and account; [§205.9(b)(1)(iii)]		
d. The location of the terminal; [§205.9(b)(1)(iv)]		
e. The name of any third party to or from whom funds were transferred; [§205.9(b)(1)(v)] Yes No		
f. The account number(s); [§205.9(b)(2)]		

	Yes	No
g. The total amount of any fees or charges assessed during the statement period for EFTs, the right to make EFTs or for account maintenance (excluding any finance charges under Regulation Z, overdraft or stop payment charges and any transfer charges combined with transfer amounts under §205.9(a)); [§205.9(b)(3)]		
h. The beginning and ending balances; [§205.9(b)(4)]		
i. The address and telephone number to be used for inquiries or notice of errors; and, [§205.9(b)(5)		
j. If applicable, the telephone number to use in finding out whether a preauthorized credit has been made as scheduled? [§205.9(b)(6)]		
6. For passbook accounts that only receive preauthorized credits, does the institution upon presentation by the consumer enter in a passbook or on a separate document the amount and date of each EFT made since the passbook was last presented? [§205.9(c)]		
F. Section 205.10–Preauthorized Transfers		
1. If a consumer's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days: [205.10(a)(1)]		
a. Does the institution provide oral or written notice, within two business days, after the transfer occurs or was scheduled to occur, that the transfer did or did not occur; or		
b. If the telephone alternative is selected, does the institution disclose the telephone number in initial disclosures and on each periodic statement; and		
c. Is the number "readily available" during the institution's business hours?		
2. Does the institution credit the consumer's account for preauthorized EFTs as of the day the funds are received? [§205.10(a)(3)]		
3. Does the institution obtain authorization from the consumer for preauthorized EFTs? [§205.10(b)]		
4. Does the financial institution comply with §205.10(c) regarding stop payment orders?		
5. If a preauthorized EFT from a consumer's account varies in amount from the previous transfer under the same authorization or preauthorized amount, does the institution provide proper notice at least ten days before the scheduled date of transfer? [§205.10(d)] *NOTE: If the designated payee makes the notification, the institution is absolved from this requirement.*		
6. Does the institution refrain from conditioning an extension of credit to a consumer on repayment by preauthorized EFTs? [§205.10(e)(1)]		
7. Does the institution refrain from requiring a consumer to establish an account with a particular institution for receipt of EFTs as a condition of employment or receipt of a government benefit? [§205.10(e)(2)]		

G. Section 205.11–Procedures for Resolving Errors		
	Yes	**No**
1. If the institution requires a written confirmation of an error within ten business days of an oral notice, is this requirement disclosed to the consumer with the address of where it must be sent? [§205.11(b)(2)]		
2. Does the institution promptly investigate alleged errors and resolve them within ten business days of receiving a notice of error? [§205.11(c)(1)]		
3. Does the institution inform the consumer of the results of the investigation within three business days after completing its investigation? [§205.11(c)(1)]		
4. After the institution determines an error occurred, is the error corrected within one business day? [§205.11(c)(1)		
5. If the institution needs more time and informs the consumer that it may take up to 45 days, does the institution: [§205.11(c)(2)]		
a. Provisionally credit the amount of the alleged error (including interest, where applicable) to the consumer's account within ten business days of the initial report (except where written confirmation is required but not received within ten business days)? [§205.11(c)(2)(i)]		
b. Notify the consumer within two business days of the amount and date of the provisional crediting and the fact that the consumer will have full use of funds pending the outcome of the investigation? [§205.11(c)(2)(ii)]		
c. Give the consumer full use of the funds during the investigation period? [§205.11(c)(2)(ii)]		
6. If the institution provisionally credited the consumer's account and determines that an error has occurred, have procedures been established to: [§205.11(c)(2)]		
a. Correct the error (including crediting interest or refunding fees) within one business day? [§205.11(c)(2)(iii)]		
b. Notify the consumer within three business days of the correction and that a provisional credit has been made final? [§205.11(c)(2)(iv)]		
7. If the institution determines that no error has occurred, have procedures been established to: [§205.11(d)]		
a. Within three business days of concluding the investigation, provide a written explanation of its findings and include the notice of the consumer's right to request the documents upon which the institution relied in making its determination? [§205.11(d)(1)]		
b. Provide copies of documents?		
c. Upon debiting a provisionally credited amount, notify the consumer of the date and amount of the debit and the fact that the institution honors checks and drafts to third parties and preauthorized transfers for five business days after notification (specifying the calendar date debiting will occur) to the extent that they would have been paid if the provisionally credited funds had not been debited? [§205.11(d)(2)]		

H. Section 205.13–Administrative Enforcement		
	Yes	**No**
1. Has the institution preserved evidence of compliance with the requirements of the Act for a two-year period or longer? [§205.13(b)]		
I. Section 205.15—Electronic Fund Transfer of Government Benefits		
1. If a government agency does not provide a periodic statement for electronic government benefits, does the agency:		
a. make the consumer's account balance available though a readily available telephone line and at a terminal; [§205.15(c)(1)]		
b. promptly provide a written history of the consumer's account transactions in response to a request that covers at least 60 days preceding the date of request by consumer; and [§205.15(c)(2)]		
c. provide modified initial disclosures according to §205.15(d)(1) and an annual error resolution notice according to §205.15(d)(2)?		
J. Section 205.16 – Disclosures at Automated Teller Machines		
1. Does the bank assess fees to non-customers who use the bank's ATMs?		
a. If yes, does the bank provide appropriate notice to consumers regarding the fees?		
b. Are the notices provided before consumers are obligated to pay the fee?		
K. Section 205.17 – Electronic Communications		
1. Does the bank deliver required disclosures electronically?		
2. Does the bank send the disclosures to consumers' e-mail addresses or make the disclosure available at another location such as a web-site?		
a. If disclosures are made available at another location such as a web-site, are consumers notified of the availability of these disclosures?		
3. If electronic communications of disclosures are returned as undeliverable, does the institution take reasonable steps to attempt delivery using information in its files?		
L. Internal Control Procedures		
1. Does the institution have adequate procedures to insure that notification of loss, theft, or unauthorized use promptly results in halting unauthorized transfers from a consumer's account, and recrediting amounts when appropriate?		
2. Do the institution's procedures indicate a willingness to resolve consumer complaints regarding EFT matters?		
3. Does a review of statements indicate that transaction identifications are in compliance with Regulation E?		

	Yes	No
4. Do automated teller and point-of-sale transfer receipts provide a clear description of the transaction that is in compliance with Regulation E?		
5. Is the institution's advertising of EFT services free of ambiguous and deceptive statements?		
6. Is the consumer's responsibility with regard to personal access codes explained?		
7. Does a review of merchant agreements and internal controls indicate that consumers are treated consistently with what has been disclosed to them (transaction limitations, costs, documentation, identification, etc.)?		
8. Does the institution maintain any log or tracking sheet for error resolution?		
9. Is personnel able to distinguish between the applicability of Regulation E and Z as part of the issuance of debit and credit cards, error resolution procedures and consumer liability?		

References

Electronic Fund Transfer Act
http://www.fdic.gov/regulations/laws/rules/6500-1350.html

Part 205, Electronic Fund Transfers (FRB Regulation E)
http://www.fdic.gov/regulations/laws/rules/6500-3100.html#6500part205rege

Advisory Opinion 94-21: User's Rights Under the Electronic Funds Transfer Act in the Event a Bank Error Regarding and Electronic Wire Transfer
http://www.fdic.gov/regulations/laws/rules/4000-8930.html#400094-21

FIL 33-2001: Electronic Fund Transfers
http://www.fdic.gov/news/news/financial/2001/fil0133.html

FIL 25-2001: Electronic Fund Transfers
http://www.fdic.gov/news/news/financial/2001/fil0125.html

FIL 114-98: Electronic Fund Transfers Act, Consumer Leasing Act, and Truth in Savings Act
http://www.fdic.gov/news/news/financial/1998/fil98114.html

FIL 31-96: Electronic Fund Transfer Act
http://www.fdic.gov/news/news/financial/1996/fil9631.html

Examination Procedures

The FFIEC approved EFT examination procedures follow or can be found on line at:
http://fdic01/division/dsc/memos/memos/direct/eftmemo.pdf

Truth in Savings Act

Introduction

The procedures and guidance in this section apply to deposit accounts at banks that are held by or offered to a consumer, including time, demand, savings, and negotiable order of withdrawal accounts. Banks are required to provide consumers with disclosures that assist them in meaningful comparisons between the competing claims of depository institutions with regard to deposit accounts.

Regulation Overview

Part 230 of the Board of Governors of the Federal Reserve System regulations, Regulation DD, implements the Truth in Savings Act, which requires the disclosure of the terms and conditions of deposit accounts offered by banks. The purpose of the act and regulation is to assist consumers in making informed decisions about accounts at depository institutions.

The major provisions of the regulation deal with the clear and uniform disclosure of the rates of interest, annual percentage yields, fees, and other account terms, the calculation and payment of interest on accounts, and the advertising of accounts.

Definitions

"Account" A deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts.

NOTE: For the purposes of the advertising requirements in §230.8, the term also includes an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer.

"Annual Percentage Yield (APY)" A percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period, calculated in accordance with Appendix A of the regulation.

"Average Daily Balance Method" The application of a periodic rate to the average daily balance in the account for that period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

"Bonus" A premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance. The term does not include interest, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

"Consumer" A natural person who holds an account primarily for personal, family, or household purposes, or to whom such an account is offered. The term does not include a natural person who holds an account for another in a professional capacity.

"Daily Balance Method" The application of a daily periodic rate to the full amount of principal in the account each day.

"Periodic Statement" A statement setting forth information about an account (other than a time account or passbook savings account) that is provided to a consumer on a regular basis four or more times a year.

"Stepped-Rate Account" An account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.

"Tiered-Rate Account" An account that has two or more interest rates that are applicable to specified balance levels. There are two acceptable tiering methods. For purposes of examples of these methods discussed below, assume the following:

Interest rate (percent)	*Deposit balance required to earn rate*
5.25%	Up to but not exceeding $2,500.
5.50%	Above $2,500 but not exceeding $15,000.

Under Tiering Method A, an institution pays on the full balance in the account the stated interest rate that corresponds to the applicable deposit tier. For example, if a consumer has a balance of $8,000, the institution pays the 5.50% interest rate on the entire $8,000.

Under Tiering Method B, an institution pays the stated interest rate only on that portion of the balance within the specified tier. For example, if a consumer has a balance of $8,000, the institution pays 5.25% on $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cut-off of $2,500).

"Variable-Rate Account" An account in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases.

Examination Objectives

The examination objectives are to:

- Determine whether a bank is effectively managing the compliance risks associated with consumer deposit account products and services.
- Assess compliance with the applicable law and regulation.
- Implement corrective actions to address compliance deficiencies and ensure future compliance.

Examination Procedures

Management or Policy-Related Procedures

1. Determine the extent and adequacy of the financial institution's policies, procedures, and practices for ensuring compliance with Regulation DD.

NOTE: This should include a determination as to whether the financial institution has an adequate internal mechanism in place to monitor the effectiveness of its compliance with the regulation.

2. Determine the extent and adequacy of the training provided to those individuals responsible for compliance with Regulation DD.
3. Review the policies and procedures of the financial institution to ensure that account disclosure information is provided to new or potential deposit account customers within the appropriate time frames.
4. Determine if the financial institution's procedures ensure subsequent disclosure of any change in terms required to be disclosed under §230.4(b) and that exceptions to notice requirements are limited to those set forth in §230.5(a)(2).
5. Determine if the financial institution's method of paying interest is permitted by the regulation. This should include a review of when interest begins to accrue for deposits to the account. (§230.7)
6. Determine if the institution's advertising policies are consistent and meet the requirements of Regulation DD. (§230.8)

Transaction-Related Procedures

Account Disclosures

1. Determine the types of deposit accounts offered to consumers. Include accounts usually offered to commercial customers that may occasionally be offered to consumers, as well as the characteristics for each type of deposit account (for example, bonuses offered, minimum balances, balance computation method, frequency of interest crediting, fixed or variable rates, fees imposed, frequency of periodic statements, etc.).
2. Review each deposit account disclosure to determine whether the contents are accurate, include all information required by the regulation, and are consistent throughout the disclosure. (§230.4(b))
3. Determine whether the account disclosures reflect the legal obligation between the consumer and the financial institution. (§230.3(b))
   - Select samples of both disclosures and legal obligations to review for consistency. Review should include testing calculations for early withdrawal penalties for consistency with the legal obligation (such as certificate of deposit form) and disclosures. If bank uses forms with boxes to indicate penalty method to be used, determine if any box or the wrong box is being checked.

NOTE: Renewal notices provide for changes in disclosures only and do not apply to the underlying legal obligation.

4. Determine whether the financial institution provides the required deposit account disclosures on a timely basis in connection with the opening of an account or upon request. (§230.4(a))

Notice of Change in Terms and Notice Before Maturity

1. Determine whether the financial institution sends out change in terms notices to consumers at least 30 calendar days in advance of the effective date of any change in a term that may reduce the APY or that adversely affects the consumer.
   - Review a sample of these notices to ensure that they include all required information
   - Verify that these notices are sent on a timely basis (§230.5(a))
2. Determine whether the financial institution sends out notices before maturity for time accounts.
   - Review a sample of these notices to ensure that they include all required information
   - Verify that these notices are sent on a timely basis (§230.5(a))
     Refer to the Prematurity Disclosures for Time Accounts chart at the end of this section.

Periodic Statement Disclosures

1. Determine the accounts for which the financial institution sends a periodic statement and the frequency with which they are sent.

NOTE: A financial institution is not required to send a periodic statement; however, if it does, it must comply with the provisions of §230.6.

2. Review a sample of periodic statements from each of the different types of deposit accounts.

NOTE: The examiner should obtain samples of completed periodic statements for each deposit account that illustrate the various types of transactions and activities permitted on the account.

3. Determine if the periodic statements include all required disclosures and that they are accurate. (§230.6)

NOTE: When testing accuracy of fees which are based on maintaining certain daily or average daily balances, determine whether the balances are being properly calculated. Review statements to determine inconsistencies such as non-business day ATM debits being posted to a depositor's account immediately for calculation of balances on which interest and fees are based, but incorrectly shown on the periodic statement as being posted on the next business day.

Payment of Interest

1. Review a sample of each of the different types of deposit accounts to determine whether the financial institution's method of paying interest is one of the methods permitted under §230.7.
   - If an account requires a minimum balance to obtain an annual percentage yield, select periodic statements where the balance drops below the minimum for one day or a few days of the period. (This will reveal whether the bank is using a prohibited low-balance method of interest calculation.)
   - Select periodic statements where the daily balance is at two or more tiers (and therefore two or more interest rates) during the same period. (This may reveal practices or methodologies which are inconsistent with disclosures/advertising or practices which are unacceptable or prohibited by the regulation. Selecting accounts with balances in just one tier or just the lowest tier during the period will not reveal these practices.)
   - When testing accounts for daily compounding of interest as disclosed and/or advertised, choose accounts which have higher balances, longer terms, and higher interest rates whenever possible. (The use of such accounts facilitates the detection of calculation errors that may otherwise be concealed in small balance, short-term, low-rate accounts.)
   - Samples should include not only deposit accounts with periodic statements, but also accounts for which no periodic statements are required. This includes such deposit types as passbook savings accounts, certificates of deposit, and IRA accounts. These may be examined by reviewing deposit histories of these accounts.
2. Determine if interest begins to accrue not later than the business day specified for interest bearing accounts under §229.14 of Regulation CC and that interest accrues until the day funds are withdrawn.

   NOTE: If the financial institution calculates interest on the collected balance (as indicated by management on the Compliance Information Document Request*), all necessary documentation for verifying when interest for the selected sample began accruing should have been requested during the initial stages of the examination.*
3. Determine that accrued interest is not forfeited when a consumer closes their account prior to crediting of the interest unless this practice is specified in the initial account disclosures.

Electronic Communication

In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) and Section 10 of the regulation, a depository institution may provide by electronic communication any disclosure required by this part to be in writing. Note that it is not mandatory that an institution provide disclosures electronically.

Enforcement Actions

Regulation DD does not address the issue of requiring monetary adjustments or reimbursement.

To avoid the possibility of an enforcement action, the institution should:

- Notify account holders of noncompliance with Regulation DD;
- Make the necessary adjustments to ensure affected account holders are not liable for either excessive fees or charges or any fee or charge that was not disclosed; and receive the appropriate amount of interest for the disclosed APY and conditions; and
- Act within 60 days of discovering the error and before an account holder files suit or notifies the bank of its noncompliance with Regulation DD.

Thus, it is in the financial institution's best interest to promptly notify account holders of any errors that are identified and promptly adjust those errors. Should a financial institution refuse to notify the account holder of the error and make necessary adjustment, Regional Directors may, in appropriate circumstances, pursue formal enforcement action under Section 8 of the FDI Act.

Record Retention

Review a sample of the financial institution's records to determine whether the institution has maintained evidence of compliance for a minimum of two years after disclosures are required to be made or action is required to be taken. (§230.9)

References

Truth in Savings Act
http://www.fdic.gov/regulations/laws/rules/6500-3400.html#6500fdi262

Part 230, Truth in Savings (Regulation DD)
http://www.fdic.gov/regulations/laws/rules/6500-3250.html

Advisory Opinion 94-54: Regulation DD – Truth in Savings: Disclosures in Advertisements Soliciting Deposits
http://www.fdic.gov/regulations/laws/rules/4000-9260.html#400094-54

Advisory Opinion 93-67: Regulation DD – Tiered-Rate Accounts and Disclosure Statement Requirements
http://www.fdic.gov/regulations/laws/rules/4000-8560.html#400093-67

Advisory Opinion 93-56: Regulation DD – Sufficiency of Proposed Disclosures of Annual Percentage Yields for Tiered-Rate Accounts
http://www.fdic.gov/regulations/laws/rules/4000-8450.html#400093-56

DCA RD Memo 02-001: Repeal of TISA Civil Liability and Impact on General Enforcement Authority
http://fdic01/division/dsc/memos/memos/direct/02_001.pdf

FIL 114-98: Electronic Fund Transfers Act, Consumer Leasing Act, and Truth in Savings Act
http://www.fdic.gov/news/news/financial/1998/fil98114.html

FIL 12-95: Truth in Savings Act
http://www.fdic.gov/news/news/financial/1995/fil9512.html

Job Aid

Prematurity Disclosures for Time Accounts

	Automatically Renewable ("Rollover") Time Accounts	**Nonautomatically Renewable ("Nonrollover") Time Accounts**
≤ 1 Month	No *advance notice* required.	No notice required.
> 1 Month but ≤ 1 Year	*Timing*: (A) 30 (calendar) days before maturity; ***or*** (B) 20 (calendar) days before end of grace period, if a grace period of at least 5 (calendar) days is provided. *Content*: Interest rate and APY for new account (or fact that rates have not been determined, when they will be, and telephone number for consumer to call for rates), and ***either***: (A) date of maturity of existing and new account, and any change in terms; ***or*** (B) full disclosure for account (Section 4(b)) and date of maturity for existing account.	
> 1 Year	*Timing*: Same as for accounts greater than one month and not more than one year. *Content*: Full disclosures for account (Section 4(b)) and date of maturity for existing account.	*Timing*: 10 (calendar) days before maturity. *Content*: Maturity date, and whether or not interest will be paid after maturity.

Truth In Savings - Examination Checklist

Section 230.3 - General Disclosure Requirements	Yes	No
1. Does the institution make the required disclosures clearly and conspicuously in writing and in a form the consumer may keep? (§230.3(a))		
2. If the disclosures required by the regulation are combined with disclosures for the institution's other accounts, is it clear which disclosures are applicable to the consumer's account? (§230.3(a))		
3. Do the disclosures reflect the terms of the legal obligation between the consumer and the institution? (§230.3(b))		
4. When orally responding to a consumer's inquiry about interest rates, does the institution state the annual percentage yield? (§230.3(e))		
5. Are all annual percentage yields accurate to within .05% above or below the annual percentage yield determined in accordance with Appendix A of the regulation? (§230.3(f)(2))		
Section 230.4 - Account Disclosures		
1. Does the institution provide initial disclosures before an account is opened or a service provided, whichever is earlier? (§230.4(a)(1))		
2. If the consumer is not present, does the institution mail or deliver the disclosures no later than ten business days after the account is opened or the service is provided (whichever is earlier)? (§230.4(a)(1))		
3. Does the institution provide account disclosures to consumers upon request? (§230.4(a)(2)(i))		
4. If the consumer's request is not made in person, does the institution mail or deliver the account disclosures within a reasonable time after it receives the request? (§230.4(a)(2)(i)		
5. In providing disclosures upon request, does the institution do the following: (§230.4(a)(2)(ii)(A)& (B))		
• Specify an interest rate and APY that was offered within the most recent seven calendar days?		
• State that the rate and yield are accurate as of an identified date?		
• Provide a telephone number consumers may call to obtain current rate information?		
6. Do account disclosures include the following rate information (as applicable): (§230.4(b)(1)(i))		
• The annual percentage yield and interest rate, using those terms?		
• For fixed-rate accounts, the period of time the interest rate will be in effect?		
7. Do disclosures for variable-rate accounts include the following: (§230.4(b)(1)(ii))		
• The fact that the interest rate and APY may change?		

	Yes	No
• How the interest rate is determined?		
• The frequency with which the interest rate may change?		
• Any limitation on the amount the interest rate may change?		
8. Do the account disclosures describe the frequency with which interest is compounded and credited? (§230.4(b)(2)(i))		
9. Do the account disclosures include a statement that interest will not be paid if consumers close an account before accrued interest is credited? (§230.4(b)(2)(ii))		
10. Do the account disclosures describe the minimum balance requirements necessary to open an account, avoid the imposition of a fee, or obtain the APY disclosed? (§230.4(b)(3)(i))		
11. Do the account disclosures state how the minimum balance requirement (except the balance to open the account) is determined for these purposes? (§230.4(b)(3)(i))		
12. Do the account disclosures include an explanation of the balance computation method used to calculate interest on the account?(§230.4(b)(3)(ii))		
13. Do the account disclosures state when interest begins to accrue on noncash deposits? (§230.4(b)(3)(iii))		
14. Do the account disclosures state the amount of any fee that may be imposed in connection with the account (or how the fee will be determined) and the conditions under which the fee may be imposed? (§230.4(b)(4))		
15. Do the account disclosures include any limitations on the number or dollar amount of withdrawals or deposits? (§230.4(b)(5))		
16. For time accounts, do the account disclosures include the following: (§230.4(b)(6))		
• The maturity date? (§230.4(b)(6)(i))		
• Early withdrawal penalties? (§230.4(b)(6)(ii))		
• If compounding occurs and interest may be withdrawn during the term, a statement that the APY assumes that interest remains on deposit and that a withdrawal will reduce earnings? (§ 230.4(b)(6)(iii))		
• Information regarding renewal policies: (§230.4(b)(6)(iv))		
° Whether the account will renew automatically?		
° If the account renews automatically, if there is a grace period and, if so, the length of the grace period?		
° If the account does not renew automatically, whether interest will be paid after maturity?		
17. Do account disclosures state the amount or type of any bonus and the conditions under which the bonus will be paid? (§230.4(b)(7))		

Section 230.5 - Subsequent Disclosures		
	Yes	**No**
1. Does the institution provide advance notification to depositors of any change to a term required to be disclosed under section 230.4(b) if the change may reduce the APY or adversely affect the consumer? (§230.5(a)(1))		
2. Does the notice include the effective date of the change? (§230.5(a)(1))		
3. Is the notice mailed or delivered at least 30 days before the effective date of the change? (§230.5(a)(1))		
4. Are exceptions to the notice requirements limited to the following: (§230.5(a)(2))		
• Variable-rate changes? (§230.5(a)(2)(i))		
• Check-printing fees? (§230.5(a)(2)(ii))		
• Short-term time accounts (one month or less)? (§230.5(a)(2)(iii))		
5. Are the proper subsequent disclosures provided for the following time accounts:		
• That renew automatically with maturities longer than one year? (§230.5(b)(1))		
• That renew automatically with maturities of one year or less but longer than one month? (§230.5(b)(2))		
• That do not renew automatically with maturities longer than one year? (§230.5(c))		
Section 230.6 - Periodic Statement Disclosures		
1. Is the annual percentage yield earned disclosed on the periodic statement, using that term? (§230.6(a)(1))		
2. Is the APY earned calculated in accordance with Appendix A of the regulation? (§230.6(a)(1))		
3. Is the amount of interest earned during the statement period accurately disclosed? (§230.6(a)(2))		
4. Are the fees required to be disclosed under section 230.4(b)(4) that were debited to the account during the statement period itemized by dollar and type? (§230.6(a)(3))		
5. Is the total number of days in the statement period, or the beginning and ending dates of the period, disclosed? (§230.6(a)(4))		
6. If the institution uses the average daily balance method and calculates interest for a period other than the statement period, is the APY earned and the amount of interest earned based on that period rather than the statement period? (§230.6(b))		

Section 230.7 – Payment of Interest		
	Yes	**No**
1. Does the institution calculate interest on the full amount of principal in the account each day by using either the daily balance method or the average daily balance method? (§230.7(a)(1))		
2. Does the institution use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated? (§230.7(a)(2))		
3. Does interest begin to accrue no later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act? (§230.7(c))		
4. Does interest accrue until the day the funds are withdrawn? (§230.7(c))		
Section 230.8 - Advertising Requirements		
1. Do the advertisements refrain from misleading or inaccurate statements, and do they accurately represent the deposit contract? (§230.8(a)(1))		
2. Do the advertisements refrain from using the terms "free" or "no cost" if any maintenance or activity fee may be imposed? (§230.8(a)(2))		
3. Do the advertisements refrain from using the word "profit" when referring to interest paid on an account? (§230.8(a)(2))		
4. If the institution advertises rates on accounts:		
• Are the rates stated as annual percentage yields, using that term? (§230.8(b))		
• If the institution uses the abbreviation "APY," has the term "annual percentage yield" been stated at least once in the advertisement? (§230.8(b))		
• If the institution states the interest rate, using that term, in conjunction with the APY, is it not more conspicuous than the APY? (§230.8(b))		
• Are the annual percentage yields and interest rates in the ads rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places? (§230.3(f)(1))		
5. If the institution advertises tiered-rate accounts, does the institution state all the APYs, including ranges where applicable, as well as the corresponding minimum balance requirements? (§230.8(b) Commentary)		
6. If the institution advertises stepped-rate accounts, does the institution accurately disclose the APY? (§230.8(b) Commentary)		
7. If the institution's deposit advertisements state the APY, are the following disclosures stated clearly and conspicuously to the extent applicable:		
• Variable rate notice? (§230.8(c)(1))		
• Time the APY is offered? (§230.8(c)(2))		
• Minimum balance to obtain the APY? (§230.8(c)(3))		

	Yes	No
• Minimum opening deposit? (§230.8(c)(4))		
• Effect of fees? (§230.8(c)(5))		
• For time accounts, the following features:		
° Time requirements? (§230.8(c)(6)(i))		
° Applicable early withdrawal penalties? (§230.8(c)(6)(ii))		
8. If a bonus is stated in an advertisement, does the advertisement state the following information, as applicable:		
• The annual percentage yield, using that term? (§230.8(d)(1))		
• Time requirement to obtain the bonus? (§230.8(d)(2))		
• Minimum balance required to obtain the bonus? (§230.8(d)(3))		
• Minimum balance required to open the account (if that amount is greater than the minimum balance necessary to obtain the bonus)? (§230.8(d)(4))		
• When the bonus will be provided? (§230.8(d)(5))		
9. For certain advertisements, are the required disclosures limited to the following, as applicable? (§230.8(e)(2)(1))		
• The minimum balances to obtain the advertised annual percentage yield (including tiered accounts)?		
• The term of time accounts?		
• The required interest payout information for the time accounts?		
• The time requirement to obtain a bonus?		
• The minimum balance to obtain a bonus?		
10. If a sign inside the bank states deposit account rates of return, does it include the following disclosures: (§230.8(e)(2)(ii)		
• The rate stated as "annual percentage yield" or "APY"? (§230.8(e)(2)(A)		
° If an interest rate is stated, is it stated in conjunction with its related "annual percentage yield"? (§230.8(e)(2)(ii)(A)		
• A statement advising consumers to contact an employee for further information about applicable fees and terms? (§230.8(e)(2)(ii)(B)		
Section 230.9 – Record Retention Requirements		
1. Has the institution retained evidence of compliance for a minimum of two years after the date disclosures are required to be made or action is required to be taken? (§230.9(c))		

	Yes	No
Section 230.10 – Electronic Communications		
1. If the institution provides disclosure via electronic communication does it do the following: (§230.10(b))		
• Obtain a consumer's affirmative consent when providing disclosures related to a transaction? (§230.10(c))		
• Provide disclosures either by: (§230.10(d)(1) & (2))		
° Sending to consumer's electronic address? or		
° Making the disclosures available at another location?		
— If making the disclosure available at another location, alert the applicant of the availability of disclosures by sending a notice to the electronic address and making it available for 90 days? ((§230.10(d)(2)(i) & (ii))		
• If the electronic communication is returned, takes reasonable steps to attempt redelivery of disclosures returned undelivered? (§230.10(e))		

Interest on Deposits — Part 329

Introduction

The procedures and guidance in this section apply to demand deposits and negotiable orders of withdrawal (NOW) accounts held at banks. Banks are prohibited from paying interest on demand deposits. However, NOW accounts are not considered "demand deposits" when the entire beneficial interest of the deposit is held by certain eligible depositors.

Regulation Overview

Part 329 of the FDIC regulations prohibits the payment of interest by banks on any demand deposit.

A demand deposit includes any deposit payable on demand; or any deposit with an original maturity or required notice period of less than seven days; or any deposit representing funds for which the bank does not reserve the right to require at least seven days' written notice of intended withdrawal; or any other deposit which the depositor is authorized to make more than six preauthorized or automatic transfers or makes more than three of these transfers by check, draft, debit card or similar order.

NOW accounts are interest bearing accounts from which depositors are permitted to make withdrawals by negotiable or transferable instruments for funds transfers to third parties. NOW accounts can be maintained by the following entities, and would not be considered demand deposits under the regulation:

- One or more individuals, including sole-proprietorships.
- A not-for-profit organization operated primarily for religious, philanthropic, charitable, educational, political, or other similar purpose.
- Officers, employees, or agents of public entities (public funds).
- Funds held in a fiduciary capacity (bank trust department, individual fiduciary, or trustee in bankruptcy), provided that all beneficiaries are natural persons.

The regulation also provides guidance on allowable transfers for nondemand deposits, interest and premiums, and interest and ten-day grace period for time and savings deposits.

Definitions

"Cash Management Arrangements" Cash management services provided by financial institutions sometimes include offering sweep accounts and repurchase agreements. Regulatory compliance for these activities is generally reviewed during risk management examinations and during nondeposit product reviews. However, examiners should be aware that Section 329.2 concerning the prohibition of paying interest on demand deposits could be violated based on the definitions of Money Market Deposit Accounts (MMDA) and savings accounts for excessive transactions.

"Money Market Deposit Account (MMDA)" An MMDA is a savings deposit that permits, under the terms of the deposit contract or by practice of the financial institution, the depositor to make no more than six transfers and withdrawals per calendar month or statement cycle of at least four weeks to another account of the depositor or to a third party.

No more than three of the six transfers can be made by check, draft, debit card, or similar order to a third party. The following transfers are not included in the six transfer limitation:

- Transfers to the financial institution for the purpose of repaying loans and associated expenses (as originator or servicer).

NOTE: This exemption "does not apply to transfers to the financial institution that are made for the purpose of repaying loans that are made by the financial institution to the depositor's demand deposit account for the purposes of covering overdrafts." (§329.1(b)(3))

- Transfers to another account of the depositor made by mail, messenger, automated teller machine (ATM), or in person.
- Withdrawals made by mail, messenger, telephone (via check mailed to the depositor), ATM, or in person.

Refer to §204.2(d) of Regulation D and the Interpretative Rule found in Section 329.101 for more guidance on MMDAs.

NOTE: Personal computer (PC) transfers should be treated just like telephone transactions and would be included in the "six" transfers and withdrawals if the PC transfer was preauthorized or automatic.

"NOW Account" NOW Accounts are deposit accounts which consist solely of funds in which the entire beneficial interest is held by:

- One or more individuals, including sole-proprietorships.
- A not-for-profit organization operated primarily for religious, philanthropic, charitable, educational, political, or other similar purpose.
- Officers, employees, or agents of public entities (public funds).
- Funds held in a fiduciary capacity (bank trust department, individual fiduciary, or trustee in bankruptcy), provided that all beneficiaries are natural persons.

The following types of entities **are not** eligible to maintain NOW accounts:

- Corporations
- For-profit partnerships, including a husband and wife partnership
- Individuals who have incorporated, such as Professional Associations (PA)
- Trust accounts where the beneficial interest is held by two or more unrelated parties, such as realty trusts

Refer to the following regulatory provisions for guidance on the definition of a NOW account:

- 12 USC 1832(a), NOW accounts (This citation is the Act which created NOW accounts.)
- Section 329.1(b)(3), footnote 1 (This footnote quotes 12 USC 1832(a) in its entirety.)
- Regulation D, Section 204.2
- Regulation D, Section 204.130
  (This is an interpretative section providing further guidance on the eligibility of certain entities to maintain NOW accounts.)

"Savings Accounts" Accounts that are subject to the same transaction limitations as MMDAs (including passbook savings accounts and statement savings accounts).

Examination Objectives

The examination objectives are to:

- Determine whether a bank is effectively managing the compliance risks associated with demand deposit accounts and NOW accounts.
- Assess compliance with the applicable law and regulation.
- Implement corrective actions to address compliance deficiencies and ensure future compliance.

Examination Procedures

Evaluate for Compliance with Part 329

1. Determine which of the following accounts the financial institution offers:
   - Demand deposits (non-interest bearing checking accounts)
   - Savings accounts
   - Negotiable Order of Withdrawal (NOW) accounts
   - Money Market Deposit Accounts (MMDA)
   - Time deposits
2. Interview personnel responsible for opening NOW accounts to ensure they know the requirements and prohibitions of Section 329.1.
3. Determine the category of account according to the activity allowed for that particular account.

NOTE: Even though an account may be classified by the financial institution as one of the above, ***the activity allowed within the account*** *dictates the actual definition. For example, an account which exceeds the monthly transfer or check processing limits should no longer be classified as a savings account but as a DDA or NOW Account by the institution. Refer to Section 204.2 of Regulation D for account definitions.*

NOW Accounts

4. Determine whether the entire beneficial ownership interest of a NOW account is held by one of the following eligible individuals or entities:
   - One or more individuals, including sole proprietorships
   - A not-for-profit organization operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes
   - A government unit of the United States, or any state, county, or municipality of the United States, or any United States territory or possession
   - A fiduciary (either individual or corporate) if the beneficiary is otherwise eligible to maintain a NOW account
   - Pension funds, escrow accounts, and security deposits if the entire beneficial interest is held by one of the eligible individuals or entities listed above.

   If an account holder(s) does not meet the above definitions, it is ineligible to maintain a NOW account. For example, for-profit partnerships and corporations are ineligible.

   Refer to Section 204.130 of Regulation D for further guidance.
5. Determine if the financial institution has adequate internal controls to ensure that ineligible entities do not maintain NOW accounts.
   - Review the NOW account trial balance:

     Use existing records, but if warranted, request a full name listing of the trial balance as opposed to a short name version. A short name listing may not include certain portions of the account title; therefore, some ineligible accounts could be missed during the review.
   - Select questionable accounts, including but not limited to the examples below, for documentation review:
     - Accounts which include the designations "Inc.," "Corp.," "LLC" (Limited Liability Corporation) or "P.C." (Professional Corporation), which imply an incorporated entity.
     - Accounts which include the designation "partnership," "limited partnership," or "general partnership".

- Accounts which include the designation "d/b/a" (doing business as).

  NOTE: A sole proprietorship using this designation may hold a NOW account. Additionally, the Federal Reserve has taken the position that a husband and wife operating as a family business which is not incorporated and is not a partnership under state law, may also be considered as eligible to hold a NOW account.

- Any other account having a title which appears to be that of a business.

6. Request the signature cards and the related tax identification numbers of the accounts selected.

NOTE: Be aware that a corporation, partnership, or other formally organized legal entity is generally required under state law to file and have approved articles or a certificate of incorporation (or organization, depending upon the type of legal entity). Furthermore, a non-profit entity, as designated by the Internal Revenue Service (IRS) will have a certificate attesting to their non-profit status issued by the IRS. ***Actual IRS documentation is not required****. However, the institution may have these items on file, or may be able to obtain them from the account holder to assist in the determination of eligibility status. In the absence of any other documentation, if an institution has obtained a signed statement on the signature card attesting to the non-profit status, examiners should consider this when determining account eligibility.*

7. Cite as violations of Section 329.1 accounts held by ineligible entities.

When an ineligible entity is consistently allowed to make more than the permitted number of withdrawals or transfers, the MMDA will be deemed to be a demand deposit account. Accordingly, cite a violation under Section 329.2 for payment of interest on a demand deposit if interest was paid during the statement cycle within which the excessive activity occurred.

NOTE: In some instances, financial institutions may contend that the "grandfather clause" in Section 204.130(f) of Regulation D exempts any ineligible NOW accounts opened on or before August 31, 1981 from violating Part 329. However, the FDIC does not support this position unless the financial institution can demonstrate that the depositor was previously qualified to maintain a NOW account under a state law prior to August 31, 1981.

8. To support violations, copy and keep in the workpapers the following, as applicable:
   - Signature cards
   - Partnership agreements or articles of incorporation/ organization
   - Any other identifying documentation

9. When violations of Section 329.1 occur, do the following:
   - Request management to review all NOW accounts to detect other accounts that may be maintained by ineligible entities.
   - Have management move any such depositors' funds to other accounts for which they qualify, such as a demand deposit or MMDA.

Money Market Deposit Accounts (MMDAs)

10. Determine if the financial institution has internal controls in place to monitor excessive MMDA activity. Most institutions monitor MMDA activities through either:
    - Manual procedures (case by case review):
      - The bank report may identify the total number of transactions made during the month, but individual account transactions may not be listed until a certain number (for example, three or six) have occurred, or
    - An excessive MMDA transaction report:
      - Request a copy of the excessive MMDA transactions report. If such a report is not available, review MMDA periodic statements for a six month period.

NOTE: Review the report to determine whether it identifies the specific type and number of transactions. Some reports, for example, may not list transactions until a certain trigger number is reached (for example, three or six). If the report or the account statements do not readily identify the specific type of transaction or whether excessive account activity has occurred, the examiner may need to review individual transaction records.

It may be difficult to determine the specific type of transaction from financial institution documentation and, therefore, to determine if excessive account activity has occurred. For example, certain financial institutions may classify ATM withdrawals and debit card purchases in the same manner. ATM withdrawals ***are not*** *considered to be part of the six allowed transfers, while point of sale transactions* ***are*** *part of the six allowed transfers. As a result, individual transaction records may have to be reviewed.*

NOTE: However, no MMDA will be deemed a demand deposit or cited as a violation merely by virtue of exceeding the six transfer limitation if the depositor is eligible to maintain a NOW account.

Do not cite violations of Regulation D within the Compliance Report of Examination if the financial institution does not have procedures to monitor excessive MMDA activity. Address an absence or weakness of procedures on the Examiner's

Comments and Conclusions page, or Supervisory Comments, depending upon the extent of non-compliance with Part 329.

11. For customers who continue to violate the MMDA transfer limits after they have been contacted by the financial institution, the financial institution should either:
    - Eliminate the transfer and draft capabilities of the account, or
    - Close the account(s) and place the funds in another account for which the depositor is eligible

12. Ensure that no more than the permitted number of transfers or withdrawals are made. A financial institution should either:
    - Prevent withdrawals or transfers of funds from the MMDA in excess of the regulatory limits, or
    - Adopt procedures to monitor transfers on an ex post basis and contact customers who exceed established limits on more than an occasional basis

Refer to footnote 5 of Section 204.2(d)(2) of Regulation D for further guidance on the procedures an institution should follow to ensure that MMDAs are properly maintained.

13. Violations of Section 329.2, Payment of Interest on Demand Deposit Accounts, could have reserve requirement ramifications. Additionally, accounts not cited as violations which are incorrectly accounted for by the institution (MMDA accounts that should be classified as NOW accounts) also could have reserve requirement ramifications. If the reclassification of accounts would have a substantial impact on reserve requirements, examiners should follow the procedures below:
    - Prepare a memorandum and forward it to the appropriate Division of Supervision and Consumer Protection (DSC) Regional Director to serve as notification of the issue.
    - Submit a copy of the memorandum to the appropriate DSC Compliance Deputy Regional Director with the Compliance Report of Examination.

    The memorandum should detail the following items:
    - The nature of the apparent violation(s) of Section 329.2
    - The potential impact on reserve requirements

NOTE: Regulation D requires financial institutions to maintain different levels of reserves against transaction accounts versus other account types, such as time or savings. If, for example, a financial institution is reporting an account as a savings account, when the activity within the account defines it as a transaction account, the financial institution's reserve requirement may be understated.

Savings Accounts

14. Determine if the institution allows the types of transactions from savings deposits which are subject to the six transfer limitation.

    Savings deposits, including passbook savings accounts and statement savings accounts, are subject to the same transaction limitations as MMDA accounts and when excess activity is detected, these accounts become demand deposits. Be aware of:
    - Commercial demand deposit accounts linked to savings accounts, where overdrafts in the demand account are covered by transfers from the savings accounts in excess of prescribed limits.
    - ACH (automated clearing house) transfers from passbook savings accounts to third parties to pay, for example, recurring insurance premiums.

    NOTE: Also, like MMDAs, no savings accounts will be deemed a demand deposit account or cited as a violation of Part 329 if the depositor is eligible to maintain a NOW account.

15. If such transactions are permitted, determine, as noted above for MMDAs, if the institution has developed a system to monitor such transactions, and what action is taken against account holders who exceed the limitation.

Cash Management Services

16. Determine if the financial institution offers cash management services.

    If so, determine if the financial institution's procedures regarding cash management services prohibit the payment of interest on demand deposit accounts.

Premiums

17. Determine if the financial institution has provided premiums to depositors in compliance with Section 329.103. Premiums can be in the form of merchandise, credit, or cash.
    - Verify that the premium is not considered "interest" (as defined in Section 329.1(c)), by determining:
        - It was only given to the depositor at the time of a new account opening or an addition to an existing account;
        - No more than two premiums per deposit were given in a twelve-month interval; and
        - The premium's values did not exceed $10 for a deposit of less than $5,000 or $20 for a deposit of $5,000 or more.

        NOTE: In the case of merchandise, the total cost to the bank includes any shipping, warehousing, packaging, and handling costs.

- Verify that the costs of the premiums were not averaged by the bank (so to avoid the $10/ $20 dollar limitations).
- Verify that the bank did not solicit deposit funds on the premise that they would divide the money into several accounts so that they could pay the depositor more than two premiums within a twelve-month interval (so to avoid the no more than two premiums per deposit in a twelve-month interval limitation).

18. Determine if the bank retained sufficient information to determine that the requirements of Section 329.103 are satisfied.

References

Federal Deposit Insurance Act
http://www.fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18g

NOW Accounts (An Act)
http://www.fdic.gov/regulations/laws/rules/6500-2530.html#6500now2

Part 329: Interest on Deposits
http://www.fdic.gov/regulations/laws/rules/2000-5300.html#2000part329

Advisory Opinion 95-29: Bank Award of Bonus Points and/or Gift Certificates for Use of a Credit Card Does Not Violate §329 as Long as Credit Card is Not Linked to a Demand Deposit Account
http://www.fdic.gov/regulations/laws/rules/4000-9590.html#400095-29

Advisory Opinion 91-86: Deposits of Real Estate Trust Accounts ("RETA") Program Established by State Statute May, Like IOLTA Deposits, be Held in NOW Accounts
http://www.fdic.gov/regulations/laws/rules/4000-6850.html#400091-86

Advisory Opinion 91-79: An Electronic Cooperative is Eligible to Hold a NOW Account Under Revised Federal Reserve Board Regulations (12 CFR §204.130)
http://www.fdic.gov/regulations/laws/rules/4000-6780.html#400091-79

Advisory Opinion 91-19: Whether ATM Promotion Constitutes Payment of Interest on Demand Deposits in Violation of 12 CFR §329
http://www.fdic.gov/regulations/laws/rules/4000-6180.html#400091-19

Advisory Opinion 91-3: FDIC Defers to Federal Reserve Board's Interpretation of NOW Accounts (12 CFR §204.130)
http://www.fdic.gov/regulations/laws/rules/4000-6020.html#400091-3

Advisory Opinion 87-43: Eligibility of Rural Electric Association Cooperative to Hold Funds in NOW Account
http://www.fdic.gov/regulations/laws/rules/4000-2730.html#400087-43

Advisory Opinion 87-19: Business Partnership and NOW Accounts
http://www.fdic.gov/regulations/laws/rules/4000-2500.html#400087-19

FIL 18-98: Prohibition Against Payment of Interest on Demand Deposits
http://www.fdic.gov/news/news/financial/1998/fil9818.html

FIL 110-97: Prohibition Against Payment of Interest on Demand Deposits
http://www.fdic.gov/news/news/financial/1997/fil97110.html

FIL 78-97: Prohibition Against Payment of Interest on Demand Deposits
http://www.fdic.gov/news/news/financial/1997/fil9778.html

(This page intentionally left blank.)

VII. Abusive Practices

Contents

Federal Trade Commission Act, Section 5 Unfair or Deceptive Acts or Practices (UDAP) VII–1.1
Introduction VII–1.1
Unfair Acts or Practices VII–1.1
Deceptive Acts and Practices VII–1.2
Examination Procedures VII–1.3
References VII–1.7
Credit Practices Rule (Regulation AA) VII-2.1
Introduction VII-2.1
Regulation Overview VII-2.1
Examination Procedures VII-2.1
References VII-2.1
Job Aids VII-2.1
FTC Rule – Preservation of Claims and Defenses VII-3.1
Introduction VII-3.1
Regulation Overview VII-3.1
References VII-3.1
Job Aids VII-3.1
Fair Debt Collection Practices Act VII-4.1
Introduction VII-4.1
Regulation Overview VII-4.1
Communications Connected with Debt Collection VII-4.1
Prohibited Practices VII-4.2
Multiple Debts VII-4.3
Legal Actions by Debt Collectors VII-4.3
Furnishing Certain Deceptive Forms VII-4.3
Civil Liability VII-4.3
Administrative Enforcement VII-4.4
Relation to State Law VII-4.4
Exemption for State Regulation VII-4.4
Examination Objectives VII-4.4
Examination Procedures VII-4.4
References VII-4.4
Job Aids VII-4.4

(This page intentionally left blank.)

Federal Trade Commission Act, Section 5 Unfair or Deceptive Acts or Practices[1]

Introduction

Advances in banking technology and changes in lending organization structure since Gramm-Leach-Bliley have permitted banks to engage in non-banking activities and given banking organizations the ability to structure financial products in increasingly complex ways and to market such products with increasingly sophisticated methods. While most banking organizations do not engage in unfair or deceptive acts or practices, the pace and complexity of these advances heighten the potential risk for consumer harm. This potential risk, coupled with identified abusive practices, warrants increased scrutiny by the FDIC and state and federal enforcement agencies. Unfair and deceptive practices are wrong, undermine consumer confidence, and present significant credit and asset quality risk undermining the financial soundness of banking organizations.

Section 5 of the Federal Trade Commission Act (FTC Act) declares that unfair or deceptive trade practices are illegal. ***See*** 15 USC §45(a) (FTC Act Section 5). The FDIC confirmed its intent to cite state nonmember banks and their institution-affiliated parties for violations of FTC Act Section 5 and will take appropriate action pursuant to its authority under Section 8 of the Federal Deposit Insurance Act (FDI Act) when unfair or deceptive trade practices are discovered.[2] FDIC enforcement action against entities other than banks will be coordinated with the Federal Trade Commission, which also has authority to take action against nonbank parties that engage in unfair or deceptive trade practices.

On March 11, 2004, the FDIC and the Federal Reserve Board (FRB) issued additional guidance regarding unfair or deceptive acts or practices prohibited by section 5 of the FTC Act.[3] The guidance explains:

- the standards used to assess whether an act or practice is unfair or deceptive;
- the interplay between the FTC Act and other consumer protection statutes; and
- guidelines for managing risks related to unfair and deceptive practices.

Following the release of the UDAP guidance, the FDIC issued a revised consultation policy which requires examiners to consult with the Regional and Washington Offices whenever an apparent unfair or deceptive act or practice is found.

Standards for Determining What is Unfair or Deceptive

The legal standards for unfairness and deception are independent of each other. Depending on the facts, a practice may be unfair, deceptive, or both.

In order to determine whether a practice is "unfair," the FDIC will consider whether the practice "causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition", ***see*** 15 USC §45(n). By adhering to this tenet, the FDIC will take action to address conduct that falls well below the high standards of business practice expected of banks and the parties affiliated with them.

To correct deceptive trade practices, the FDIC will take action against representations, omissions, or practices that are likely to mislead consumers acting reasonably under the circumstances, and are likely to cause such consumers harm. The FDIC will focus on material misrepresentations, i.e., those that affect choices made by consumers because such misrepresentations are most likely to cause consumers financial harm. ***See*** FTC Policy Statement on Deception (October 14, 1983).

Unfair or deceptive acts or practices that violate the FTC Act may also violate other federal or state laws. These include the Truth-in-Lending and Truth-in-Savings Acts, the Equal Credit Opportunity and Fair Housing Acts, and the Fair Debt Collection Practices Act. On the other hand, certain practices may comply fully with consumer protection or other laws and yet still violate the FTC Act. Examiners should consider both possibilities.

Unfair Acts or Practices

Standards for assessing whether an act or practice is unfair

An act or practice is unfair where it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition. Public policy may also be considered in the analysis of whether a particular act or practice is unfair. Each of these elements is discussed further below.

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-021: Procedures for Determining Compliance with the Prohibition on Unfair or Deceptive Acts or Practices Found in Section 5 of the FTC Act.

2 *See* FIL 57-2002

3 *See* FIL 26-2004

- ***The act or practice must cause or be likely to cause substantial injury to consumers.***

  To be unfair, an act or practice must cause or be likely to cause substantial injury to consumers. Substantial injury usually involves monetary harm. An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury. An injury may be substantial if it raises a significant risk of concrete harm. Trivial or merely speculative harms are typically insufficient for a finding of substantial injury. Emotional impact and other more subjective types of harm will not ordinarily make a practice unfair.

- ***Consumers must not reasonably be able to avoid the injury.***

  A practice is not considered unfair if consumers may reasonably avoid injury. Consumers cannot reasonably avoid injury from an act or practice if it interferes with their ability to effectively make decisions. Withholding material price information until after the consumer has committed to purchase the product or service would be an example of preventing a consumer from making an informed decision. A practice may also be unfair where consumers are subject to undue influence or are coerced into purchasing unwanted products or services.

  The FDIC will not second-guess the wisdom of particular consumer decisions. Instead, the FDIC will consider whether a bank's behavior unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making.

- ***The injury must not be outweighed by countervailing benefits to consumers or to competition.***

  To be unfair, the act or practice must be injurious in its net effects —that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act or practice. Offsetting benefits may include lower prices or a wider availability of products and services.

  Costs that would be incurred for remedies or measures to prevent the injury are also taken into account in determining whether an act or practice is unfair. These costs may include the costs to the bank in taking preventive measures and the costs to society as a whole of any increased burden and similar matters.

- ***Public policy may be considered.***

  Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair. For example, the fact that a particular lending practice violates a state law or a banking regulation may be considered as evidence in determining whether the act or practice is unfair. Conversely, the fact that a particular practice is affirmatively allowed by statute may be considered as evidence that the practice is not unfair. Public policy considerations by themselves, however, will not serve as the primary basis for determining that an act or practice is unfair.

Deceptive Acts and Practices

Standards for assessing whether an act or practice is deceptive

A three-part test is used to determine whether a representation, omission, or practice is "deceptive." First, the representation, omission, or practice must mislead or be likely to mislead the consumer. Second, the consumer's interpretation of the representation, omission, or practice must be reasonable under the circumstances. Lastly, the misleading representation, omission, or practice must be material. Each of these elements is discussed below in greater detail.

- ***There must be a representation, omission, or practice that misleads or is likely to mislead the consumer.***

  An act or practice may be found to be deceptive if there is a representation, omission, or practice that misleads or is likely to mislead the consumer. Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be found to be deceptive if it is likely to mislead consumers. A representation may be in the form of express or implied claims or promises and may be written or oral. Omission of information may be deceptive if disclosure of the omitted information is necessary to prevent a consumer from being misled.

  In determining whether an individual statement, representation, or omission is misleading, the statement, representation, or omission will not be evaluated in isolation. The FDIC will evaluate it in the context of the entire advertisement, transaction, or course of dealing to determine whether it constitutes deception. Acts or practices that have the potential to be deceptive include: making misleading cost or price claims; using bait-and-switch techniques; offering to provide a product or service that is not in fact available; omitting material limitations or conditions from an offer; selling a product unfit for the purposes for which it is sold; and failing to provide promised services.

- ***The act or practice must be considered from the perspective of the reasonable consumer.***

  In determining whether an act or practice is misleading, the consumer's interpretation of or reaction to the representation, omission, or practice must be reasonable under the circumstances. The test is whether the consumer's expectations or interpretation are reasonable in light of the claims made. When representations or marketing practices

are targeted to a specific audience, such as the elderly or the financially unsophisticated, the standard is based upon the effects of the act or practice on a reasonable member of that group.

If a representation conveys two or more meanings to reasonable consumers and one meaning is misleading, the representation may be deceptive. Moreover, a consumer's interpretation or reaction may indicate that an act or practice is deceptive under the circumstances, even if the consumer's interpretation is not shared by a majority of the consumers in the relevant class, so long as a significant minority of such consumers is misled.

In evaluating whether a representation, omission or practice is deceptive, the FDIC will look at the entire advertisement, transaction, or course of dealing to determine how a reasonable consumer would respond. Written disclosures may be insufficient to correct a misleading statement or representation, particularly where the consumer is directed away from qualifying limitations in the text or is counseled that reading the disclosures is unnecessary. Likewise, oral disclosures or fine print may be insufficient to cure a misleading headline or prominent written representation.

- ***The representation, omission, or practice must be material.***

  A representation, omission, or practice is material if it is likely to affect a consumer's decision regarding a product or service. In general, information about costs, benefits, or restrictions on the use or availability of a product or service is material. When express claims are made with respect to a financial product or service, the claims will be presumed to be material. Similarly, the materiality of an implied claim will be presumed when it is demonstrated that the institution intended that the consumer draw certain conclusions based upon the claim.

  Claims made with the knowledge that they are false will also be presumed to be material. Omissions will be presumed to be material when the financial institution knew or should have known that the consumer needed the omitted information to evaluate the product or service.

Relationship to Other Laws

Acts or practices that are unfair or deceptive within the meaning of section 5 of the FTC Act may also violate other federal or state statutes. On the other hand, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as consumer protection and fair lending laws. Banks should be mindful of both possibilities. The following laws warrant particular attention in this regard:

Truth in Lending and Truth in Savings Acts

Pursuant to the Truth in Lending Act (TILA), creditors must "clearly and conspicuously" disclose the costs and terms of credit. The Truth in Savings Act (TISA) requires depository institutions to provide interest and fee disclosures for deposit accounts so that consumers may compare deposit products. TISA also provides that advertisements shall not be misleading or inaccurate, and cannot misrepresent an institution's deposit contract. An act or practice that does not comply with these provisions of TILA or TISA may also violate the FTC Act. On the other hand, a transaction that is in technical compliance with TILA or TISA may nevertheless violate the FTC Act. For example, consumers could be misled by advertisements of "guaranteed" or "lifetime" interest rates when the creditor or depository institution intends to change the rates, whether or not the disclosures satisfy the technical requirements of TILA or TISA.

Equal Credit Opportunity and Fair Housing Acts

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction against persons on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that an applicant's income derives from any public assistance program, and the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Similarly, the Fair Housing Act (FHAct) prohibits creditors involved in residential real estate transactions from discriminating against any person on the basis of race, color, religion, sex, handicap, familial status, or national origin. Unfair or deceptive practices that target or have a disparate impact on consumers who are members of these protected classes may violate the ECOA or the FHAct, as well as the FTC Act.

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act prohibits unfair, deceptive, and abusive practices related to the collection of consumer debts. Although this statute does not by its terms apply to banks that collect their own debts, failure to adhere to the standards set by this Act may support a claim of unfair or deceptive practices in violation of the FTC Act. Moreover, banks that either affirmatively or through lack of oversight, permit a third-party debt collector acting on their behalf to engage in deception, harassment, or threats in the collection of monies due may be exposed to liability for approving or assisting in an unfair or deceptive act or practice.

Examination Procedures

Required Consultations with FDIC Regional and Washington Offices

Because Congress drafted the FTC Act prohibition against unfair and deceptive practices broadly, it is flexible enough to

address change in market conduct as it emerges. To determine whether an act or practice is unfair or deceptive, examiners must carefully evaluate the facts in consultation with policy and legal staff from the FDIC Regional and Washington Offices.

FDIC examiners must consult with Field and Regional Office staff when they identify an act or practice that appears to be unfair or deceptive. This requirement applies when potential unfair or deceptive acts or practices are identified during an examination, through a consumer complaint, or from another source. Further formal consultation with the FDIC Washington Office is required once the preliminary facts have been established and the Region believes a violation should be cited. Formal FDIC Washington Office consultation memoranda should be addressed to the Associate Director. They should include a description of the act or practice that explains why it meets the standards for unfairness or deception described above.

Scoping

The scope of an examination to determine whether an institution is engaging in unfair or deceptive practices encompasses the institution's product(s), service(s), target market(s), operations, and compliance management systems and programs. Consistent with the FDIC's risk-focused examination approach, examiners should develop a compliance risk profile for the institution using information about the institution's business lines, organizational structure, operations, past supervisory performance and identified high risk areas, such as subprime lending, servicing and collections by third-parties, and situations in which allegations of misleading advertising have been made.

Consumer complaints received by the FDIC or the bank are also an important source of information in identifying possible areas of concern, even if previously resolved. Although a consumer complaint may not evidence an unfair or deceptive practice when considered in isolation, additional information or a pattern of complaints may reveal such practices.

Evaluating Compliance Management Systems and Programs

When reviewing a bank's compliance management system (CMS), examiners should consider whether it ensures that the institution avoids unfair or deceptive acts or practices, and promptly remedies any such practices that may nevertheless arise.

The degree of specificity with which a CMS can be expected to address this area will vary depending on the bank's size, complexity and product offerings. A small institution that offers a limited number of products through a few branches, with marketing restricted to local newspaper and radio outlets, will not need the kind of specific, documented compliance program that should be in place at an institution engaged in nationwide mortgage or credit card lending. On the other hand, where an institution offers products or uses business strategies that have repeatedly raised concern about consumer treatment, a compliance program should be in place that specifically addresses steps taken to ensure that unfair or deceptive conduct does not occur.

Consider these general questions when conducting the examination:

- What is the role and approach of the compliance function in the bank? Does it go beyond merely checking whether the letter of the law is followed, to considering the larger question of whether interactions with customers are clear and fair?
- Does the compliance function have sufficient resources and authority to be in a position to both detect potentially unfair or deceptive acts or practices, and take action to address them?
- Does the bank have a complaint resolution process that will not only appropriately resolve individual problems, but also evaluate complaints to detect potentially unfair or deceptive practices that should be changed to avoid customer harm?

Identify the risks for unfair or deceptive acts or practices in the bank's product lines, interactions with customers and potential customers, and outsourcing practices. Then consider:

- Has the bank identified these risks, either explicitly or implicitly? Are there risks that are not identified?
- Does the bank's CMS address the identified risks? Is the attention given commensurate with the degree of risk?
- How effective is the CMS in practice?

Based upon your review of the risks and the bank's CMS, determine whether additional, more specific evaluation is required.

Evaluating Products, Operations and Communications

The prohibitions against unfair or deceptive acts or practices apply to all bank products and services. However, there are some activities that have been particularly susceptible to violations of the FTC Act and warrant additional scrutiny. These include:

- marketing to the elderly or financially vulnerable or unsophisticated,
- subprime mortgage and credit card lending,
- payday lending,
- overdraft or "bounce" protection, and

- marketing and collection practices that result in increased fees.

Some operational areas also have a heightened risk of producing unfair or deceptive practices. These include:

- development of product structure and terms,
- advertising and solicitation,
- repricing and change of terms,
- servicing and collections, and
- the management and monitoring of employees and third-parties.

Section 5 of the FTC Act does not impose specific requirements on banks. Policies and procedures necessary to avoid engaging in unfair or deceptive activities will largely be based upon the bank's products and services, marketing and advertising, and its outsourcing agreements with third parties.

Examiners should use the questions below as applicable. If it appears that unfairness or deception may be occurring, examiners should analyze the situation by applying the standards above and the UDAP Guidance. As they develop this analysis, FDIC examiners should consult with Regional and Washington Office policy staff as well as the Legal Division.

Product Structure and Terms

The structure and pricing of consumer products, particularly mortgages and credit cards, has become increasing complex and diverse. Consequently, it has become increasingly important that communications with consumers are meaningful and easily understood.

Examiners should use copies of disclosures, notices, agreements, and promotional materials for the products and services[4] *at risk for unfair or deceptive practices, as well as discussions with appropriate bank personnel, to respond to the following questions, as applicable:*

1. Does the bank review all promotional materials, marketing scripts, and customer agreements and disclosures to ensure that they fairly and adequately describe the terms, benefits, and material limitations of the product or service being offered, including any related or optional products or services, and that they do not misrepresent such terms either affirmatively or by omission?
2. Do the promotional materials and/or customer agreements and disclosures draw the attention of customers to key terms, including limitations and conditions that are important in enabling the customer to make an informed decision regarding whether the product or service meets the customer's needs?
3. Do the promotional materials and/or customer agreements and disclosures used clearly disclose all material limitations or conditions on the terms or availability of products or services, such as a limitation that applies a special interest rate only to balance transfers; the expiration date for terms that apply only during an introductory period; material prerequisites for obtaining particular products, services or benefit (e.g., discounts, refunds or rebates); or conditions for canceling a service without charge when the service is offered on a trial basis?
4. Do the promotional materials and/or customer agreements and disclosures inform consumers in a clear and timely manner about any fees, penalties, or other charges (including charges for any force-placed products) that have been imposed, and the reasons for their imposition?
5. Do the promotional materials and/or customer agreements and disclosures clearly inform customers of contract provisions that permit a change in the terms and conditions of an agreement?
6. Does the bank advertise services or benefits provided in connection with an account that it does not intend or is not able to provide? Are the conditions imposed to receive such services or benefits so burdensome or difficult to meet that the advertised service or benefit is illusory?
7. Does the bank clearly disclose when apparently optional products and services — such as insurance, travel services, credit protection, and consumer report update services that are offered simultaneously with credit — are required to obtain credit or considered in decisions to grant credit?
8. When making claims about amounts of credit available to consumers, does the bank accurately and completely represent the amount of potential, approved, or useable credit that the consumer will receive? Is the product structured so that the amount of available credit is so low as to significantly reduce or eliminate the consumer's ability to use the product? Do fees and charges, imposed both initially and throughout the term of the loan, similarly impair the utility of the loan?
9. Does the bank avoid making representations to consumers that they may pay less than the minimum amount due required by the account terms without adequately disclosing any late fees, over-the-limit fees, or other account fees that will result from the consumer paying such reduced amount? Does the bank waive the consumer's credit limit for the purpose of obtaining additional over-the-limit fees?
10. Does the bank, if offering a variety of interest rates on different types of balances, clearly advise consumers how their payments will be applied?
11. Is the "please pay by" date stated on the periodic statement consistent with the product's grace period?

4 Examiners should review sample periodic statements if they are used to convey offers, particularly offers that relate to fees or collection practices.

Advertising and Solicitation

The need for clear and accurate marketing and disclosures that are sensitive to the sophistication of the target audience is heightened for products and services that have been associated with deceptive practices. Accordingly, banks should take particular care in marketing credit and other products and services to the elderly, the financially vulnerable, and customers who are not financially sophisticated. In addition, creditors should pay particular attention to ensure that disclosures are clear and accurate with respect to:

- the points and other charges that will be financed as part of home-secured loans;
- the terms and conditions related to insurance offered in connection with loans;
- loans covered by the Home Ownership and Equity Protection Act;
- reverse mortgages;
- secured and other credit cards designed to rehabilitate the credit position of the cardholder;
- overdraft or "bounce" protection; and
- loans with pre-payment penalties, temporary introductory terms, or terms that are not available as advertised to all consumers.

Examiners should use representative samples of all marketing and advertising materials, including print, electronic and other media, such as the Internet, e-mail and text messages, telephone solicitation scripts, agreements and disclosures for the product(s) and service(s) under analysis, together with any marketing and solicitation policies or instructions, as well as discussions with appropriate bank personnel, to respond to the following questions:

1. Does the bank ensure that there is a reasonable factual basis for all representations made?
2. Does the bank ensure that these promotional materials do not use fine print, separate statements or inconspicuous disclosures to correct potentially misleading headlines?
3. When using terms such as "pre-approved" or "guaranteed," do the promotional materials and/or customer agreements and disclosures used by the bank clearly disclose any limitations, conditions, or restrictions on the offer?
4. Does the bank tailor advertisements, promotional materials, disclosures and scripts to take account of the sophistication and experience of the target audience? Do the promotional materials or customer agreements/disclosures used by the bank make claims, representations or statements that may mislead members of the target audience about the cost, value, availability, cost savings, benefits, or terms of the product or service?
5. Does the bank ensure that costs and benefits of optional or related products and services, such as overdraft protection, are not misrepresented or presented in an incomplete manner?
6. Does the bank avoid advertising terms that are not available to most customers and using unrepresentative examples in advertising, marketing, and promotional materials?
7. Do the promotional materials or customer agreements/disclosures used by the bank clearly disclose a telephone number or mailing address (and, as an addition, an email or website address if available) that consumers may use to contact the bank or its third-party servicers regarding any complaints they may have, and maintain appropriate procedures for resolving complaints?

Repricing and Other Changes in Terms

The terms and conditions governing many credit and deposit products provide for periodic adjustments tied to an external variable such as changes in a defined prime rate or the London Inter Bank Offering Rate (LIBOR). Many of the terms governing credit cards may be changed automatically following the occurrence of a specified event. Such events may include an increase in the interest rate upon the consumer's delinquency with either the credit card issuer or other creditor, or upon fifteen-day written notice to the consumer. The terms and notices given to consumers should be meaningful and easy to understand.

Examiners should use representative samples of customer notification forms, periodic statements, telephone scripts, and any related print or electronic materials, together with repricing and other change-in-terms policies or procedures and associated employee instructions and policy manuals, as well as discussions with appropriate bank personnel, to obtain responses to the following questions:

1. Do credit agreements clearly disclose that the bank or subsidiary may unilaterally make future changes to the rate or other terms and conditions? Do those disclosures clearly explain the circumstances under which such changes may be made, such as a delinquency with the creditor or with any other creditor, on the credit line or with any other credit and the nature and potential range of such changes?
2. Does the bank or subsidiary have policies and procedures to ensure the reasonable and clear disclosure of post-origination changes?

Servicing and Collections

Servicing practices have a noteworthy capacity to be unfair, as do a number of collection practices. These activities are often conducted by bank subsidiaries and third-party contractors, in which case examiners should review these activities both in light of the questions below as well as those found under "Monitoring the Conduct of Employees and Third Parties."

Examiners should use servicing and collection policies, telephone scripts, training and compliance manuals, as well as periodic statements and payment histories, in addition to discussions with appropriate bank personnel, to determine:

1. Does the bank charge customers for products or services they did not bargain for, like various credit protection programs or insurance?
2. Are the amounts due stated and any associated fees or charges on the periodic billing statements accurately and clearly disclosed?
3. Does the bank ensure that the institution and its third party servicers have and follow procedures to credit consumer payments in a timely manner? Consumers should be clearly told when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest.
4. Does the bank promptly post payments upon receipt?
5. Does the bank mail periodic statements in a manner calculated to increase late payments?
6. Does the bank structure the product to trigger multiple charges or fees for late payment or exceeding the credit limit?
7. If the bank uses an automated call answering service for billing questions, is there a mechanism to obtain a human representative for questions that are unanswered or have not been resolved?
8. Does the bank continue to contact consumers at work after being advised not to do so?
9. Does the bank disclose the consumers' debt to third-parties without the consumer's consent? Does the bank discontinue calls to third-parties once they have notified the institution that they do not have any location information about the consumer?
10. Does the bank make repeated telephone calls to consumers and/or third parties with the intent to annoy, abuse, or harass any person at the number called?

Monitoring the Conduct of Employees and Third-Parties

Banks should have procedures in place to assure that their employees and third-party contractors, as well as other individuals and entities with whom they do business, avoid engaging in unfair or deceptive acts or practices. Examiners should evaluate how the bank monitors the activities of third-party contractors, vendors and service providers to ensure that they comply with the FTC's prohibition on unfair or deceptive acts.

Examiners should use training and policy manuals, scripts, oversight and compliance policies, and discussions with appropriate bank personnel, to respond to the following questions:

1. Does the bank ensure that employees and third parties who market or promote bank products, or service loans, are adequately trained to avoid making statements or taking actions that might be unfair or deceptive?

2. Does the bank review compensation arrangements for bank employees as well as third-party contractors and service providers to ensure that they do not create unintended incentives to engage in unfair or deceptive practices, particularly with respect to loan originations and collections?

3. Has the bank implemented and maintained effective risk and supervisory controls to select and manage third-party contractors or service providers?

References

DSC Memorandum 6428, Procedures for Determining Compliance with the Prohibition on Unfair or Deceptive Acts or Practices found in Section 5 of the Federal Trade Commission Act, June 17, 2005

FDIC Consultation Policy

DSC RD Memo 04-17: Consultation Policy and Procedures for Compliance Examination and Community Reinvestment Act Issues
http://fdic01/division/dsc/memos/memos/direct/04-017.pdf

Policy Statements and Enforcement Actions Involving Unfair or Deceptive Acts or Practices

FTC Policy Statement on Unfairness,
http://www.ftc.gov/bcp/policystmt/ad-unfair.htm

FTC Policy Statement on Deception,
http://www.ftc.gov/bcp/policystmt/ad-decept.htm

FIL 57-2002: Guidance on Unfair or Deceptive Acts or Practices
http://www.fdic.gov/news/news/financial/2002/fil0257.html

FIL 26-2004: Unfair or Deceptive Acts or Practices by State-Chartered Banks
http://www.fdic.gov/news/news/financial/2004/fil2604.html

OCC Advisory Letter 2002-3: Guidance on Unfair or Deceptive Acts or Practices,
http://www.occ.treas.gov/ftp/advisory/2002-3.txt

OCC Unfair and Deceptive Enforcement Actions
http://www.occ.treas.gov/Consumer/Unfair.htm

FTC's Subprime Lending Cases
http://www.ftc.gov/opa/2002/07/subprimelendingcases.htm

FTC Unfair or Deceptive Acts or Practices Enforcement Actions: Mortgage Servicing
http://www.ftc.gov/bcp/conline/edcams/fairbanks/index.htm

FTC Unfair or Deceptive Acts or Practices Enforcement Actions: Collection Practices
http://www.ftc.gov/opa/2004/08/appliedcard.htm

OCC Policy Statements and Enforcement Actions Relating to Credit Cards
http://www.occ.treas.gov/Consumer/creditcard.htm

Other Regulations with Provisions that Relate to Accurate Advertising

12 CFR Part 226: Regulation Z, Truth in Lending
12 CFR Section 226.16: Open-end advertising
http://www.fdic.gov/regulations/laws/rules/6500-1650.html#6500226.16

12 CFR Section 226.24: Closed-end advertising
http://www.fdic.gov/regulations/laws/rules/6500-1700.html#6500226.24

12 CFR Part 230: Regulation DD, Truth in Savings Advertising: 12 CFR Section 230.8
http://www.fdic.gov/regulations/laws/rules/6500-3250.html#6500230.8

12 CFR Section 230.11: Additional disclosure requirements for institutions advertising the payment of overdrafts
http://www.fdic.gov/regulations/laws/rules/6500-3250.html#6500230.11

12 CFR Part 343: Consumer Protection in Sales of Insurance
12 CFR Section 343.40(d): Advertising
http://www.fdic.gov/regulations/laws/rules/2000-6300.html

Credit Practices Rule (Regulation AA)

Introduction

The Credit Practices Rule (Rule), contained in Subpart B of the Federal Reserve Board's Regulation AA, was adopted to prohibit certain unfair and deceptive practices related to consumer credit contracts. The prohibitions contained in the Rule apply to all credit contracts originated or purchased by financial institutions other than those for the purchase of real estate.

Regulation Overview

The Credit Practices Rule applies to all consumer credit contracts other than those for the purchase of real estate. It prohibits banks from using certain remedies to enforce consumer credit obligations. Under the Rule, banks may not include these remedies in their consumer credit contracts, and, if banks purchase contracts that contain a prohibited provision(s), banks are prohibited from enforcing the provision(s).

The prohibited provisions are: (1) A confession of judgment clause, (also known as a cognovit or warrant of attorney) which permits a creditor to obtain a judgment based on the borrower's agreement in advance that, in the event of a suit on the obligation, the borrower waives the right to notice and the opportunity to be heard; (2) a waiver of exemption in which the consumer relinquishes a statutory right protecting his or her home and other necessities from seizure to satisfy a judgment, unless the waiver applies solely to property that serves as security for the obligation; (3) an irrevocable assignment of future wages which gives the bank the right to receive the consumer's wages or earnings directly from the consumer's employer, unless the assignment constitutes a payroll deduction plan or other preauthorized payment plan; and (4) the taking of nonpossessory security interests in household goods, unless such goods are purchased with the credit extended by the bank.

The Rule also prohibits a practice known as "pyramiding late charges." Under the pyramiding provision, a bank is prevented from assessing multiple late charges based on a single late payment that is subsequently paid. This provision applies only to closed-end credit contracts.

Finally, the Rule prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give a cosigner, prior to becoming obligated in a consumer credit transaction, a disclosure notice which explains the nature of the cosigner's obligations and liabilities under the contract.

Examination Procedures

1. Determine through discussion with financial institution management and staff if the financial institution attempts to enforce confessions of judgment, assignments of wages, security interests in household goods, or waivers of exemption in originated or acquired consumer contracts. (227.13)
2. Review the financial institution's collection policies, procedures, and practices to ensure that staff members are not using an assignment of wages except where permissible. (227.13(c))
3. Review past due loans to determine if the financial institution collects or attempts to collect overdue payments through assignments of wages. 227.13(c))
4. Review past due loans to determine if the financial institution collects, or attempts to collect, a late charge on a timely payment because of the consumer's failure to pay a late charge attributable to a prior delinquent payment. This prohibited practice is known as pyramiding of late charges. (227.15)
5. Determine, through a review of procedures, policies, and practices, whether the financial institution takes steps to prevent its staff from engaging in prohibited co-signer practices on loans. (227.14(a))
6. Determine through discussions with financial institution management and staff, if there is evidence that the financial institution engages in prohibited co-signer practices. Examples include misrepresentation of a co-signer's liability and contractually obligating co-signers prior to informing them of their liability. (227.14(a))
7. Determine through discussions with financial institution management and staff and a review of loan files, whether the co-signer is informed prior to becoming obligated, of the nature and extent of the co-signer's liability in accordance with Section 227.14(a).

References

Regulation AA, Unfair or Deceptive Acts or Practices, Part 227
12 CFR §227, 15 USC §57a
http://www.fdic.gov/regulations/laws/rules/6500-3205.html#6500part227udapregaa

Staff Guidelines on the Credit Practices Rule
http://www.fdic.gov/regulations/laws/rules/6500-3205.html#6500part227staffguidelines

Job Aids

See **Examiner Checklist—Credit Practices Rule** on next page.

Examiner Checklist—Credit Practices Rule		
	Yes	**No**
1. Do the consumer contracts or related documents originated by the institution contain any of the following prohibited provisions:		
• Confession of judgment? (227.13(a))		
• Waiver of statutory property exemption, (unless the waiver applies solely to the property which will serve as security for the loan)? (227.13(b))		
• Assignment of wages or other earnings (except where permitted)? (227.13(c))		
• Blanket security interests in household goods? (227.13(d))		
2. Does the institution acquire loans originated by other creditors?		
If so, does it attempt to enforce any of the following prohibited practices:		
• Confession of judgment? (227.13(a))		
• Waiver of statutory property exemption, (unless the waiver applies solely to the property which will serve as security for the loan)? (227.13(b))		
• Assignment of wages or other earnings (except where permitted)? (227.13 (c))		
• Blanket security interests in household goods? (227.13(d))		
3. Does the institution take a nonpossessory security interest in household goods (as defined in Section 227.12(d)) not purchased with the loan proceeds? (Review financial institution security agreement forms.)		
4. Has the institution attempted to enforce any prohibited practices with respect to the consumer credit contracts it has originated? (227.13(a) or 227.13(b))		
5. Does the institution collect or attempt to collect a late charge on a timely payment because of the consumer's failure to pay a late charge attributable to a prior delinquent payment? (227.15)		
6. Has the institution engaged in any prohibited cosigner practices (for example, misrepresenting the cosigner's liability or obligating cosigners prior to providing the required notification)? (227.14(a))		
7. Does the institution provide each cosigner, prior to becoming contractually obligated, the required notice or one that is substantially similar (whether separate or contained in the credit document)? (227.14(b))		

FTC Rule – Preservation of Claims and Defenses

Introduction

The purpose of the Federal Trade Commission's (FTC) 1976 rule concerning the Preservation of Consumers' Claims and Defenses (16 CFR Part 433), sometimes called the Holder-in-Due-Course Rule (Rule), is to ensure that consumer credit contracts used in financing the retail purchase of consumer goods or services specifically preserve the consumer's rights against the seller. The FTC determined that it constitutes an unfair and deceptive practice for a seller, in the course of financing a consumer purchase of goods or services, to employ procedures which make the consumer's duty to pay independent of the seller's duty to fulfill its obligations.

Regulation Overview

The Holder-in-Due-Course Rule prohibits a seller from taking or receiving a consumer credit contract that does not contain a prescribed notice which preserves the consumer's claims and defenses in the event that the contract is negotiated or assigned to a third party creditor. In addition, the Rule provides that the seller may not accept the proceeds of a purchase money loan unless the evidence of the loan contains the prescribed notice preserving as against the lender whatever claims and defenses the consumer may have against the seller. Omission of the required notice by the seller, or acceptance by the seller of the proceeds of the purchase money loan where the evidence of the loan does not contain the notice, constitutes an unfair or deceptive practice within the meaning of Section 5 of the Federal Trade Commission Act.

The Rule does not apply to all credit instruments. The Notice must appear in written obligations defined as "Consumer Credit Contracts" in the Rule. The definition includes any written instrument which, under the Truth in Lending Act and Regulation Z constitutes a consumer credit contract and which is used to "Finance a Sale" or in connection with a "Purchase Money Loan," as those terms are defined in the Rule. Credit card instruments are specifically exempted from the Rule.

Under the Rule, banks which purchase consumer paper containing the notice required of sellers cannot avail themselves of the holder-in-due-course doctrine. Also, banks which make purchase money loans containing the notice will be subject to all claims and defenses which the consumer could assert against the seller.

If banks accept consumer paper which fails to contain the notice required of sellers, they may be considered to be a participant in the seller's violation of the Rule. Banks making purchase money loans must include the prescribed notice in their contracts.

The required notice, which follows, must be in at least **ten point**, **bold face**, type:

NOTICE
Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

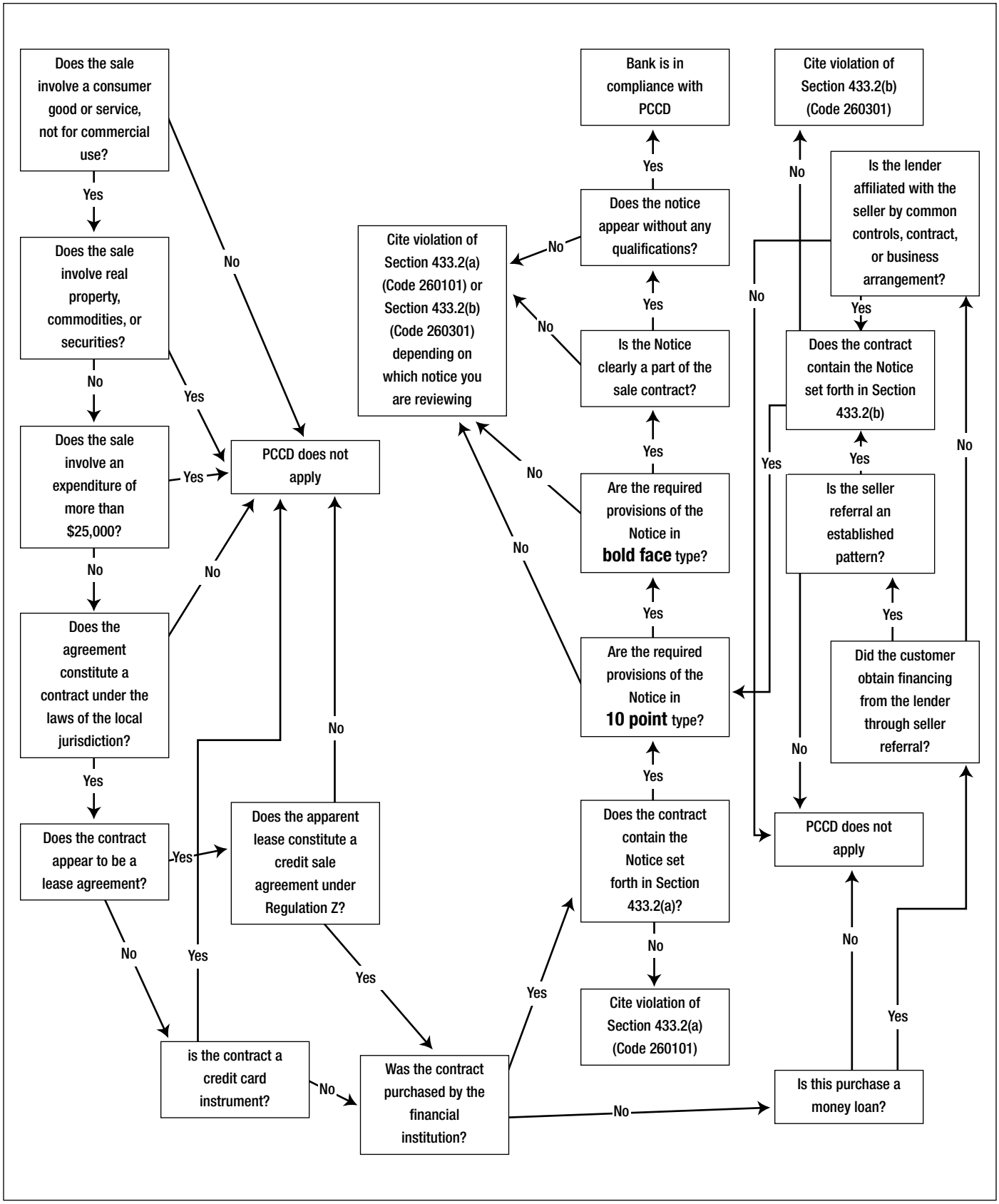
References

FTC Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses, and Staff Guidelines
http://www.fdic.gov/regulations/laws/rules/6500-2600.html#6500ftctradereg

Job Aids

See **Preservation of Consumers' Claims and Defenses (PCCD)** *chart, next page.*

Preservation of Consumers' Claims and Defenses (PCCD)



Fair Debt Collection Practices Act[1]

Introduction

The Fair Debt Collection Practices Act (FDCPA), effective in 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices. The federal law also protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection.

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to the collection of corporate debt or to debt for business or agricultural purposes.

Regulation Overview

Debt That Is Covered

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to the collection of corporate debt or to debt owed for business or agricultural purposes.

Debt Collectors That Are Covered

Under FDCPA, a "debt collector" is defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own consumer debts. That definition would include, for example, an institution that regularly collects debts for an unrelated institution. This includes reciprocal service arrangements where one institution solicits the help of another in collecting a defaulted debt from a customer who has moved.

Debt Collectors That Are Not Covered

An institution is not a debt collector under the FDCPA when it collects:

- Another's debts in isolated instances.
- Its own debts under its own name.
- Debts it originated and then sold but continues to service (for example, mortgage and student loans).
- Debts that were not in default when they were obtained.
- Debts that were obtained as security for a commercial credit transaction (for example, accounts receivable financing).
- Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the institution's trust department or mortgage loan escrow for taxes and insurance).
- Debts regularly for other institutions to which it is related by common ownership or corporate control.

Debt collectors that are not covered also include:

- Officers or employees of an institution who collect debts owed to the institution in the institution's name.
- Legal process servers.

Communications Connected with Debt Collection

For communications with a consumer or third party connected with the collection of a debt, the term "consumer" is defined to include the borrower's spouse, parent (if the borrower is a minor), guardian, executor, or administrator.

When, Where, and With Whom Communication is Permitted

Communicating with the Consumer

A debt collector may not communicate with a consumer at any unusual time (generally before 8 a.m. or after 9 p.m. in the consumer's time zone) or at any place that is inconvenient to the consumer, unless the consumer or a court of competent jurisdiction has already given permission for such contacts. A debt collector may not contact the consumer at his or her place of employment if the collector has reason to believe the employer prohibits such communications.

If the debt collector knows the consumer has retained an attorney to handle the debt, and can easily ascertain the attorney's name and address, all contacts must be with that attorney, unless the attorney is unresponsive or agrees to allow direct communication with the consumer.

Ceasing Communication with the Consumer

When a consumer refuses, in writing, to pay a debt or requests that the debt collector cease further communication, the collector must cease all further communication, except to advise the consumer that:

- The collection effort is being stopped.
- Certain specified remedies ordinarily invoked may be pursued or, if appropriate, that a specific remedy will be pursued.

Mailed notices from the consumer are official when they are received by the debt collector.

Communicating with Third Parties

The only third parties that a debt collector may contact when trying to collect a debt are:

- The consumer.
- The consumer's attorney.
- A consumer reporting agency (if permitted by local law).

1 This section fully incorporates the examination procedures issued under DCA RD Memo 97-020: Fair Debt Collection Practices Act.

- The creditor.
- The creditor's attorney.
- The debt collector's attorney.

The consumer or a court of competent jurisdiction may, however, give the debt collector specific permission to contact other third parties. In addition, a debt collector who is unable to locate a consumer may ask a third party for the consumer's home address, telephone number and place of employment (location information). The debt collector must give his or her name and state that he or she is confirming or correcting location information about the consumer. Unless specifically asked, the debt collector may not name the collection firm or agency or reveal that the consumer owes any debt.

No third party may be contacted more than once unless the collector believes that the information from the first contact was wrong or incomplete and that the third party has since received better information, or unless the third party specifically requests additional contact.

Contact with any third party by postcard, letter or telegram is allowed only if the envelope or content of the communication does not indicate the nature of the collector's business.

Validation of Debts

The debt collector must provide the consumer with certain basic information. If that information was not in the initial communication and if the consumer has not paid the debt five days after the initial communication, the following information must be sent to the consumer in written form:

- The amount of the debt;
- The name of the creditor to whom the debt is owed;
- Notice that the consumer has 30 days to dispute the debt before it is assumed to be valid;
- Notice that upon such written dispute, the debt collector will send the consumer a verification of the debt or a copy of any judgment; and
- Notice that if, within the 30-day period, the consumer makes a written request for the name and address of the original creditor, if it is different from the current creditor, the debt collector will provide that information.

If, within the 30-day period, the consumer disputes in writing any portion of the debt or requests the name and address of the original creditor, the collector must stop all collection efforts until he or she mails the consumer a copy of a judgment or verification of the debt, or the name and address of the original creditor, as applicable.

Prohibited Practices

Harassing or Abusive Practices

A debt collector in collecting a debt, may not harass, oppress, or abuse any person.

Specifically, a debt collector may not:

- Use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person.
- Use obscene, profane, or other language which abuses the hearer or reader.
- Publish a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of sections 603(f) or 604(3) of the Act.
- Advertise a debt for sale to coerce payment.
- Annoy, abuse, or harass persons by calling repeatedly their telephone number or allowing their telephones to ring continually.
- Make telephone calls without properly identifying oneself, except as allowed to obtain location information.

False or Misleading Representations

A debt collector, in collecting a debt, may not use any false, deceptive, or misleading representation. Specifically, a debt collector may not:

- Falsely represent or imply that he or she is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or similar identification.
- Falsely represent the character, amount, or legal status of the debt, or of any services rendered, or compensation he or she may receive for collecting the debt.
- Falsely represent or imply that he or she is an attorney or that communications are from an attorney.
- Threaten to take any action which is not legal or intended.
- Falsely represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person, unless such action is lawful and intended by the debt collector or creditor.
- Falsely represent or imply that the sale, referral, or other transfer of the debt will cause the consumer to lose a claim or a defense to payment, or become subject to any practice prohibited by the FDCPA.

- Falsely represent or imply that the consumer committed a crime or other conduct to disgrace the consumer.
- Communicate, or threaten to communicate, false credit information or information which should be known to be false, including not identifying disputed debts as such.
- Use or distribute written communications made to look like or falsely represented to be documents authorized, issued, or approved by any court, official, or agency of the United States or any state if it would give a false impression of its source, authorization, or approval.
- Use any false representation or deceptive means to collect or attempt to collect a debt or to obtain information about a consumer.
- Fail to disclose in the initial written communication with the consumer, and the initial oral communication if it precedes the initial written communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. In addition, the debt collector must disclose in subsequent communications that the communication is from a debt collector. (These disclosures do not apply to a formal pleading made in connection with a legal action.)
- Falsely represent or imply that accounts have been sold to innocent purchasers.
- Falsely represent or imply that documents are legal process.
- Use any name other than the true name of the debt collector's business, company, or organization.
- Falsely represent or imply that documents are not legal process or do not require action by the consumer.
- Falsely represent or imply that he or she operates or is employed by a consumer reporting agency.

Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt. Specifically, a debt collector may not:

- Collect any interest, fee, charge or expense incidental to the principal obligation unless it was authorized by the original debt agreement or is otherwise permitted by law.
- Accept a check or other instrument postdated by more than five days, unless he or she notifies the consumer, in writing, of any intention to deposit the check or instrument. That notice must be made not more than ten or less than three business days before the date of deposit.
- Solicit a postdated check or other postdated payment instrument to use as a threat or to institute criminal prosecution.
- Deposit or threaten to deposit a postdated check or other postdated payment instrument before the date on the check or instrument.
- Cause communication charges, such as those for collect telephone calls and telegrams, to be made to any person by concealing the true purpose of the communication.
- Take or threaten to repossess or disable property when the creditor has no enforceable right to the property or does not intend to do so, or if, under law, the property cannot be taken, repossessed or disabled.
- Use a postcard to contact a consumer about a debt.

Multiple Debts

If a consumer owes several debts that are being collected by the same debt collector, payments must be applied according to the consumer's instructions. No payment may be applied to a disputed debt.

Legal Actions by Debt Collectors

A debt collector may file a lawsuit to enforce a security interest in real property only in the judicial district in which the real property is located. Other legal actions may be brought only in the judicial district in which the consumer lives or in which the original contract creating the debt was signed.

Furnishing Certain Deceptive Forms

No one may design, compile and/or furnish any form which creates the false impression that someone other than the creditor (for example, a debt collector) is participating in the collection of a debt.

Civil Liability

A debt collector who fails to comply with any provision of the FDCPA is liable for:

- Any actual damages sustained as a result of that failure;
- Punitive damages as allowed by the court–
  - in an individual action, up to $1,000; or
  - in a class action, up to $1,000 for each named plaintiff and an award to be divided among all members of the class of an amount up to $500,000 or 1 percent of the debt collector's net worth, whichever is less;
- Costs and a reasonable attorney's fee in any such action.

In determining punitive damages, the court must consider the nature, frequency and persistency of the violations and the extent to which they were intentional. In a class action, the court must also consider the resources of the debt collector and the number of persons adversely affected.

Defenses

A debt collector is not liable for a violation if a preponderance of the evidence shows it was not intentional and was the result of a bona fide error that arose despite procedures reasonably designed to avoid any such error. The collector is also not liable if he or she, in good faith, relied on an advisory opinion

of the Federal Trade Commission even if the ruling is later amended, rescinded, or determined to be invalid for any reason.

Jurisdiction and Statute of Limitations

Action against debt collectors for violations of the FDCPA may be brought in any appropriate U.S. district court or other court of competent jurisdiction. The consumer has one year from the date on which the violation occurred to start such as action.

Administrative Enforcement

The Federal Trade Commission (FTC) is the primary enforcement agency for the FDCPA. The various financial regulatory agencies enforce the FDCPA for the institutions they supervise. Neither the FTC nor any other agency may issue regulations governing the collection of consumer debts by debt collectors. The FTC may, however, issue advisory opinions under the Federal Trade Commission Act on the meaning and application of the FDCPA.

Relation to State Law

The FDCPA preempts state law only to the extent that a state law is inconsistent with the FDCPA. A state law that is more protective of the consumer is not considered inconsistent with the FDCPA.

Exemption for State Regulation

The FTC may exempt certain classes of debt collection practices from the requirements of the FDCPA if the FTC has determined that state laws impose substantially similar requirements and that there is adequate provision for enforcement.

Examination Objectives

The objectives of the examination are to:

1. Identify financial institutions that are debt collectors;
2. Determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with FDCPA; and
3. Determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.

Examination Procedures

The following procedures are to be completed through interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of any written collection procedures, reciprocal collection agreements, collection letters, dunning notices, envelopes, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records.

1. Determine if the institution is a debt collector under the FDCPA.
2. Determine if the institution has established internal procedures and controls to assure compliance with the FDCPA.
3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:
   - Communicated with the consumer or third parties in any prohibited manner;
   - Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements;
   - Used any harassing, abusive, unfair or deceptive colletion practice prohibited by the FDCPA;
   - Collected any amount not expressly authorized by the agreement creating the debt or by state law;
   - Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts; and
   - Filed suit in an authorized forum if the institution sued to collect the debt.

References

15 USC §1692: Fair Debt Collection Practices Act
http://www.fdic.gov/regulations/laws/rules/6500-1300.html#6500titleviiidcp

Federal Trade Commission Staff Commentary on the FDCPA
http://www.ftc.gov/os/statutes/fdcpa/commentary.htm

FIL 26-97: Amendment to the Fair Debt Collection Practices Act
http://www.fdic.gov/news/news/financial/1997/fil9726.html

Job Aids

See **Examination Checklist – Fair Debt Collection Practices Act** *on the following page.*

Examination Checklist—Fair Debt Collection Practices Act		
	Yes	**No**
1. Is the institution aware of the circumstances in which the FDCPA applies and, as appropriate, has it established internal procedures and controls to assure compliance with the FDCPA?		
2. Has the institution acted as a "debt collector" under the FDCPA by either:		
a. regularly attempting to collect defaulted consumer debts owed to others; or,		
b. attempting to collect its own consumer debts in a name other than its own? *NOTE: If the answers to questions 2a and 2b are "No," the institution has not acted as a debt collector under the FDCPA and the examiner should not complete the remainder of the checklist.*		
3. In attempting to collect consumer debts as a "debt collector" under the FDCPA, did the institution:		
a. communicate with the consumer or any third party in a prohibited manner?		
b. adhere to the required debt validation procedure?		
c. use any harassing, abusive, unfair or deceptive practice or means?		
d. collect any more than authorized by the debt instrument or state law?		
e. properly apply any payment received in the case of multiple debts owned by the same consumer?		
f. bring legal action only in a judicial district permitted under the FDCPA?		

(This page intentionally left blank.)

VIII. Privacy and Consumer Information

Contents

Gramm-Leach-Bliley Act (Privacy of Consumer Financial Information) VIII–1.1

Introduction VIII–1.1
Definitions and Key Concepts VIII–1.1
Financial Institution Duties VIII–1.3
Requirements for Notices VIII–1.3
Other Matters VIII–1.5
Examination Objectives VIII–1.5
Examination Procedures VIII–1.5
Module 1 VIII–1.9
Module 2 VIII–1.11
Module 3 VIII–1.12
Module 4 VIII–1.13
Module 5 VIII–1.13
Module 6 VIII–1.14
Examination Checklist VIII–1.15
References VIII–1.26
Job Aids VIII–1.26

Children's Online Privacy Protection Act (COPPA) VIII-2.1

Introduction VIII-2.1
Examination Objectives VIII-2.1
Examination Procedures VIII-2.1
References VIII-2.1

Right to Financial Privacy Act VIII-3.1

Introduction VIII-3.1
Examination Objective VIII-3.1
Examination Procedures VIII-3.1
References VIII-3.1
Job Aids VIII-3.1
Right to Financial Privacy Worksheet VIII-3.2

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 VIII-4.1

Introduction VIII-4.1
Key Definitions VIII-4.1
General Requirements of the CAN-SPAM Statute: VIII-4.2
Examination Objectives: VIII-4.2
Examination Procedures VIII-4.3
References VIII-4.4
Job Aids VIII-4.4

Telephone Consumer Protection Act **VIII-5.1**
Introduction VIII-5.1
Key Definitions: VIII-5.1
General Requirements of TCPA VIII-5.1
Examination Objectives: VIII-5.2
Examination Procedures VIII-5.2
Verification Procedures VIII-5.3
Automated Dialing and Abandoned Calls VIII-5.4
Conclusions VIII-5.4
References VIII-5.4
Job Aids VIII-5.4
Fair Credit Reporting Act **VIII-6.1**
Introduction VIII-6.1
Structure and Overview of Examination Modules VIII-6.1
Key Definitions VIII-6.1
Examination Objectives VIII-6.2
Examination Procedures VIII-6.2
Module 1: Obtaining Consumer Reports VIII-6.5
Module 2: Obtaining Information and Sharing Among Affiliates VIII-6.7
Module 3: Disclosures to Consumers and Miscellaneous Requirements VIII-6.13
Module 4: Financial Institutions as Furnishers of Information VIII-6.19
Module 5: Consumer Alerts and Identity Theft Protections VIII-6.23

Gramm-Leach-Bliley Act (Privacy of Consumer Financial Information)[1]

Introduction

On November 12, 1999, President Clinton signed into law the Gramm-Leach-Bliley Act (the Act or GLBA). Title V, Subtitle A of the Act governs the treatment of nonpublic personal information about consumers by financial institutions. Section 502 of the Subtitle, subject to certain exceptions, prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure. Section 503 requires the institution to provide notice of its privacy policies and practices to its customers. Section 504 authorizes the issuance of regulations to implement these provisions.

Accordingly, on June 1, 2000, the four federal bank and thrift regulators published substantively identical regulations implementing provisions of the Act governing the privacy of consumer financial information. The regulations establish rules governing duties of a financial institution to provide particular notices and limitations on its disclosure of nonpublic personal information, as summarized below. A more complete discussion appears later in this chapter.

- A financial institution must provide a notice of its privacy policies, and allow the consumer to opt out of the disclosure of the consumer's nonpublic personal information, to a nonaffiliated third party if the disclosure is outside of the exceptions in sections 13, 14 or 15 of the regulations.
- Regardless of whether a financial institution shares nonpublic personal information, the institution must provide notices of its privacy policies to its customers.
- A financial institution generally may not disclose customer account numbers to any nonaffiliated third party for marketing purposes.
- A financial institution must follow reuse and redisclosure limitations on any nonpublic personal information it receives from a nonaffiliated financial institution.

The privacy regulations became effective on November 13, 2000. Compliance was required as of July 1, 2001.

Definitions and Key Concepts

In discussing the duties and limitations imposed by the regulations, a number of key concepts are used. These concepts include "financial institution"; "nonpublic personal information"; "nonaffiliated third party"; the "opt out" right and the exceptions to that right; and "consumer" and "customer." Each concept is briefly discussed below. A more complete explanation of each appears in the regulations.

"Financial institution" is any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities, as determined by section 4(k) of the Bank Holding Company Act of 1956. Financial institutions can include banks, securities brokers and dealers, insurance underwriters and agents, finance companies, mortgage bankers, and travel agents[2].

"Nonpublic personal information" generally is any information that is not publicly available and that:

- a consumer provides to a financial institution to obtain a financial product or service from the institution;
- results from a transaction between the consumer and the institution involving a financial product or service; or
- a financial institution otherwise obtains about a consumer in connection with providing a financial product or service.

Information is publicly available if an institution has a reasonable basis to believe that the information is lawfully made available to the general public from government records, widely distributed media, or legally required disclosures to the general public. Examples include information in a telephone book or a publicly recorded document, such as a mortgage or securities filing.

Nonpublic personal information may include individual items of information as well as lists of information. For example, nonpublic personal information may include names, addresses, phone numbers, social security numbers, income, credit score, and information obtained through Internet collection devices (i.e., cookies).

There are special rules regarding lists. Publicly available information would be treated as nonpublic if it were included on a list of consumers derived from nonpublic personal information. For example, a list of the names and addresses of a financial institution's depositors would be nonpublic personal information even though the names and addresses might be published in local telephone directories because the list is derived from the fact that a person has a deposit account with an institution, which is not publicly available information.

However, if the financial institution has a reasonable basis to believe that certain customer relationships are a matter of public record, then any list of these relationships would be considered publicly available information. For instance, a list

1 This section fully incorporates the examination procedures issued under DCA RD Memo 01-002: Interagency Examination Procedures for Reviewing Compliance with Part 332-Privacy of Consumer Financial Information.

2 These regulators are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

of mortgage customers where the mortgages are recorded in public records would be considered publicly available information. The institution could provide a list of such customers, and include on that list any other publicly available information it has about the customers on that list without having to provide notice or opt out.

"Nonaffiliated third party" is any person except a financial institution's affiliate or a person employed jointly by a financial institution and a company that is not the institution's affiliate. An "affiliate" of a financial institution is any company that controls, is controlled by, or is under common control with the financial institution.

"Opt Out" Right and Exceptions
The Right — Consumers must be given the right to "opt out" of, or prevent, a financial institution from disclosing nonpublic personal information about them to a nonaffiliated third party, unless an exception to that right applies. The exceptions are detailed in sections 13, 14, and 15 of the regulations and described below.

As part of the opt out right, consumers must be given a reasonable opportunity and a reasonable means to opt out. What constitutes a *reasonable opportunity to opt out* depends on the circumstances surrounding the consumer's transaction, but a consumer must be provided a reasonable amount of time to exercise the opt out right. For example, it would be reasonable if the financial institution allows 30 days from the date of mailing a notice or 30 days after customer acknowledgement of an electronic notice for an opt out direction to be returned. What constitutes a *reasonable means to opt out* may include check-off boxes, a reply form, or a toll-free telephone number, again depending on the circumstances surrounding the consumer's transaction. It is not reasonable to require a consumer to write his or her own letter as the only means to opt out.

The Exceptions — Exceptions to the opt out right are detailed in sections 13, 14, and 15 of the regulations. Financial institutions need not comply with opt-out requirements if they limit disclosure of nonpublic personal information:

- To a nonaffiliated third party to perform services for the financial institution or to function on its behalf, including marketing the institution's own products or services or those offered jointly by the institution and another financial institution. The exception is permitted only if the financial institution provides notice of these arrangements and by contract prohibits the third party from disclosing or using the information for other than the specified purposes. In a contract for a joint marketing agreement, the contract must provide that the parties to the agreement are jointly offering, sponsoring, or endorsing a financial product or service. However, if the service or function is covered by the exceptions in section 14 or 15 (discussed below), the financial institution does not have to comply with the additional disclosure and confidentiality requirements of section 13. Disclosure under this exception could include the outsourcing of marketing to an advertising company. (Section 13)
- As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or under certain other circumstances relating to existing relationships with customers. Disclosures under this exception could be in connection with the audit of credit information, administration of a rewards program, or to provide an account statement. (Section 14)
- For specified other disclosures that a financial institution normally makes, such as to protect against or prevent actual or potential fraud; to the financial institution's attorneys, accountants, and auditors; or to comply with applicable legal requirements, such as the disclosure of information to regulators. (Section 15)

"Consumer *and* **Customer"** The distinction between consumers and customers is significant because financial institutions have additional disclosure duties with respect to customers. All customers covered under the regulation are consumers, but not all consumers are customers.

A **"consumer"** is an individual, or that individual's legal representative, who obtains or has obtained a financial product or service from a financial institution that is to be used primarily for personal, family, or household purposes.

A **"financial service"** includes, among other things, a financial institution's evaluation or brokerage of information that the institution collects in connection with a request or an application from a consumer for a financial product or service. For example, a financial service includes a lender's evaluation of an application for a consumer loan or for opening a deposit account even if the application is ultimately rejected or withdrawn.

Consumers who are not customers are entitled to an initial privacy and opt out notice only if the financial institution wants to share their nonpublic personal information with nonaffiliated third parties outside of the exceptions.

A **"customer"** is a consumer who has a "customer relationship" with a financial institution. A "customer relationship" is a *continuing* relationship between a consumer and a financial institution under which the institution provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

- For example, a customer relationship may be established when a consumer engages in one of the following activities with a financial institution:

- maintains a deposit or investment account;
- obtains a loan;
- enters into a lease of personal property; or
- obtains financial, investment, or economic advisory services for a fee.

Customers are entitled to initial and annual privacy notices regardless of the information disclosure practices of their financial institution.

There is a special rule for loans. When a financial institution sells the servicing rights to a loan to another financial institution, the customer relationship transfers with the servicing rights. However, any information on the borrower retained by the institution that sells the servicing rights must be accorded the protections due any consumer.

- Note that isolated transactions alone will not cause a consumer to be treated as a customer. For example, if an individual purchases a bank check from a financial institution where the person has no account, the individual will be a consumer but not a customer of that institution because he or she has not established a customer relationship. Likewise, if an individual uses the ATM of a financial institution where the individual has no account, even repeatedly, the individual will be a consumer, but not a customer of that institution.

Financial Institution Duties

The regulations establish specific duties and limitations for a financial institution based on its activities. Financial institutions that intend to disclose nonpublic personal information outside the exceptions will have to provide opt out rights to their customers and to consumers who are not customers. All financial institutions have an obligation to provide an initial and annual notice of their privacy policies to their customers. All financial institutions must abide by the regulatory limits on the disclosure of account numbers to nonaffiliated third parties and on the redisclosure and reuse of nonpublic personal information received from nonaffiliated financial institutions.

A brief summary of financial institution duties and limitations appears below. A more complete explanation of each appears in the regulations.

Notice and Opt Out Duties to Consumers

If a financial institution intends to disclose nonpublic personal information about any of its consumers (whether or not they are customers) to a nonaffiliated third party, and an exception does not apply, then the financial institution must provide to the consumer:

- an initial notice of its privacy policies;
- an opt out notice (including, among other things, a reasonable means to opt out); and
- a reasonable opportunity, before the financial institution discloses the information to the nonaffiliated third party, to opt out.

The financial institution may not disclose any nonpublic personal information to nonaffiliated third parties except under the enumerated exceptions unless these notices have been provided *and* the consumer has not opted out. Additionally, the institution must provide a *revised notice* before the financial institution begins to share a new category of nonpublic personal information or shares information with a new category of nonaffiliated third party in a manner that was not described in the previous notice.

Note that a financial institution need not comply with the initial and opt-out notice requirements for consumers who are not customers if the institution limits disclosure of nonpublic personal information to the exceptions.

Notice Duties to Customers

In addition to the duties described above, there are several duties unique to customers. In particular, regardless of whether the institution discloses or intends to disclose nonpublic personal information, a financial institution must provide notice to its customers of its privacy policies and practices at various times.

- A financial institution must provide an *initial notice* of its privacy policies and practices to each customer, not later than the time a customer relationship is established. Section 4(e) of the regulations describes the exceptional cases in which delivery of the notice is allowed subsequent to the establishment of the customer relationship.
- A financial institution must provide an *annual notice* at least once in any period of 12 consecutive months during the continuation of the customer relationship.
- Generally, new privacy notices are not required for each new product or service. However, a financial institution must provide a *new notice* to an existing customer when the customer obtains a new financial product or service from the institution, if the initial or annual notice most recently provided to the customer was *not* accurate with respect to the new financial product or service.
- When a financial institution does not disclose nonpublic personal information (other than as permitted under section 14 and section 15 exceptions) and does not reserve the right to do so, the institution has the option of providing a simplified notice.

Requirements for Notices

Clear and Conspicuous. Privacy notices must be clear and conspicuous, meaning they must be reasonably understandable

and designed to call attention to the nature and significance of the information contained in the notice. The regulations do not prescribe specific methods for making a notice clear and conspicuous, but do provide examples of ways in which to achieve the standard, such as the use of short explanatory sentences or bullet lists, and the use of plain-language headings and easily readable typeface and type size. Privacy notices also must accurately reflect the institution's privacy practices.

Delivery Rules. Privacy notices must be provided so that each recipient can reasonably be expected to receive actual notice in writing, or if the consumer agrees, electronically. To meet this standard, a financial institution could, for example, (1) hand-deliver a printed copy of the notice to its consumers, (2) mail a printed copy of the notice to a consumer's last known address, or (3) for the consumer who conducts transactions electronically, post the notice on the institution's web site and require the consumer to acknowledge receipt of the notice as a necessary step to completing the transaction.

For customers only, a financial institution must provide the initial notice (as well as the annual notice and any revised notice) so that a customer may be able to retain or subsequently access the notice. A written notice satisfies this requirement. For customers who obtain financial products or services electronically, and agree to receive their notices on the institution's web site, the institution may provide the current version of its privacy notice on its web site.

Notice Content. A privacy notice must contain specific disclosures. However, a financial institution may provide to consumers who are not customers a "short form" initial notice together with an opt out notice stating that the institution's privacy notice is available upon request and explaining a reasonable means for the consumer to obtain it. The following is a list of disclosures regarding nonpublic personal information that institutions must provide in their privacy notices, as applicable:

1. categories of information collected;
2. categories of information disclosed;
3. categories of affiliates and nonaffiliated third parties to whom the institution may disclose information;
4. policies with respect to the treatment of former customers' information;
5. information disclosed to service providers and joint marketers (Section 13);
6. an explanation of the opt out right and methods for opting out;
7. any opt out notices the institution must provide under the Fair Credit Reporting Act with respect to affiliate information sharing;
8. policies for protecting the security and confidentiality of information; and
9. a statement that the institution makes disclosures to other nonaffiliated third parties as permitted by law (Sections 14 and 15).

Limitations on *Disclosure* of Account Numbers

A financial institution must not disclose an account number or similar form of access number or access code for a credit card, deposit, or transaction account to any nonaffiliated third party (other than a consumer reporting agency) for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

The disclosure of encrypted account numbers without an accompanying means of decryption, however, is not subject to this prohibition. The regulation also expressly allows disclosures by a financial institution to its agent to market the institution's own products or services (although the financial institution must not authorize the agent to directly initiate charges to the customer's account). Also not barred are disclosures to participants in private-label or affinity card programs, where the participants are identified to the customer when the customer enters the program.

***Redisclosure* and Reuse Limitations on Nonpublic Personal Information Received**

If a financial institution receives nonpublic personal information from a nonaffiliated financial institution, its disclosure and use of the information is limited.

- For nonpublic personal information received under a Section 14 or 15 exception, the financial institution is limited to:
  - Disclosing the information to the affiliates of the financial institution from which it received the information;
  - Disclosing the information to its own affiliates, who may, in turn, disclose and use the information only to the extent that the financial institution can do so; and
  - Disclosing and using the information pursuant to a section 14 or 15 exception (for example, an institution receiving information for account processing could disclose the information to its auditors).
- For nonpublic personal information received other than under a section 14 or 15 exception, the recipient's use of the information is unlimited, but its disclosure of the information is limited to:
  - Disclosing the information to the affiliates of the financial institution from which it received the information;

- Disclosing the information to its own affiliates, who may, in turn disclose the information only to the extent that the financial institution can do so; and
- Disclosing the information to any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which it received the information. For example, an institution that received a customer list from another financial institution could disclose the list (1) in accordance with the privacy policy of the financial institution that provided the list, (2) subject to any opt out election or revocation by the consumers on the list, and (3) in accordance with appropriate exceptions under sections 14 and 15.

Other Matters

Fair Credit Reporting Act

The regulations do not modify, limit, or supersede the operation of the Fair Credit Reporting Act.

State Law

The regulations do not supersede, alter, or affect any state statute, regulation, order, or interpretation, except to the extent that it is inconsistent with the regulations. A state statute, regulation, order, etc. is consistent with the regulations if the protection it affords any consumer is greater than the protection provided under the regulations, as determined by the FTC.

Grandfathered Service Contracts

Contracts that a financial institution has entered into, on or before July 1, 2000, with a nonaffiliated third party to perform services for the financial institution or functions on its behalf, as described in section 13, will satisfy the confidentiality requirements of section 13(a)(1)(ii) until July 1, 2002, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information.

Guidelines Regarding Protecting Customer Information

The regulations require a financial institution to disclose its policies and practices for protecting the confidentiality, security, and integrity of nonpublic personal information about consumers (whether or not they are customers). The disclosure need not describe these policies and practices in detail, but instead may describe in general terms who is authorized to have access to the information and whether the institution has security practices and procedures in place to ensure the confidentiality of the information in accordance with the institution's policies.[3]

The four federal bank and thrift regulators have published guidelines, pursuant to section 501(b) of the Gramm-Leach-Bliley Act, that address steps a financial institution should take in order to protect customer information. The guidelines relate only to information about customers, rather than all consumers. Compliance examiners should consider the findings of a 501(b) inspection during the compliance examination of a financial institution for purposes of evaluating the accuracy of the institution's disclosure regarding data security.

Examination Objectives

1. To assess the quality of a financial institution's compliance management policies and procedures for implementing the privacy regulation, specifically ensuring consistency between what the financial institution tells consumers in its notices about its policies and practices and what it actually does.
2. To determine the reliance that can be placed on a financial institution's internal controls and procedures for monitoring the institution's compliance with the privacy regulation.
3. To determine a financial institution's compliance with the privacy regulation, specifically in meeting the following requirements:
   - Providing to customers notices of its privacy policies and practices that are timely, accurate, clear and conspicuous, and delivered so that each customer can reasonably be expected to receive actual notice;
   - Disclosing nonpublic personal information to nonaffiliated third parties, other than under an exception, after first meeting the applicable requirements for giving consumers notice and the right to opt out;
   - Appropriately honoring consumer opt out directions;
   - Lawfully using or disclosing nonpublic personal information received from a nonaffiliated financial institution; and
   - Disclosing account numbers only according to the limits in the regulations.
4. To initiate effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

Examination Procedures

A. Through discussions with management and review of available information, identify the institution's information sharing practices (and changes to those practices) with affiliates and nonaffiliated third parties; how it treats nonpublic personal information; and how it administers opt-outs. Consider the following as appropriate:

3 Certain functionally-regulated subsidiaries, such as brokers, dealers, and investment advisers will be subject to privacy regulations issued by the Securities and Exchange Commission. Insurance entities may be subject to privacy regulations issued by their respective state insurance authorities.

1. Notices (initial, annual, revised, opt out, short-form, and simplified);
2. Institutional privacy policies and procedures, including those to:
   - process requests for nonpublic personal information, including requests for aggregated data;
   - deliver notices to consumers;
   - manage consumer opt out directions (e.g., designating files, allowing a reasonable time to opt out, providing new opt out and privacy notices when necessary, receiving opt out directions, handling joint account holders);
   - prevent the unlawful disclosure and use of the information received from nonaffiliated financial institutions; and
   - prevent the unlawful disclosure of account numbers;
3. Information sharing agreements between the institution and affiliates and service agreements or contracts between the institution and nonaffiliated third parties either to obtain or provide information or services;
4. Complaint logs, telemarketing scripts, and any other information obtained from nonaffiliated third parties (Note: review telemarketing scripts to determine whether the contractual terms set forth under section 13 are met and whether the institution is disclosing account number information in violation of section 12);
5. Categories of nonpublic personal information collected from or about consumers in obtaining a financial product or service (e.g., in the application process for deposit, loan, or investment products; for an over-the-counter purchase of a bank check; from E-banking products or services, including the data collected electronically through Internet cookies; or through ATM transactions);
6. Categories of nonpublic personal information shared with, or received from, each nonaffiliated third party; and
7. Consumer complaints regarding the treatment of nonpublic personal information, including those received electronically.
8. Records that reflect the bank's categorization of its information sharing practices under Sections 13, 14, 15, and outside of these exceptions.
9. Results of a 501(b) inspection (used to determine the accuracy of the institution's privacy disclosures regarding data security).

B. Use the information gathered from step A to work through the "Privacy Notice and Opt Out Decision Tree" (page VIII-1.7). Identify which module(s) (beginning on page VIII-1.9) of procedures is (are) applicable.

C. Use the information gathered from step A to work through the Reuse and Redisclosure and Account Number Sharing Decision Trees, as necessary (page VIII-1.8). Identify which module (beginning on page VIII-1.13) is applicable.

D. Determine the adequacy of the finan0cial institution's internal controls and procedures to ensure compliance with the privacy regulation as applicable. Consider the following:

1. Sufficiency of internal policies and procedures, and controls, including review of new products and services and controls over servicing arrangements and marketing arrangements;
2. Effectiveness of management information systems, including the use of technology for monitoring, exception reports, and standardization of forms and procedures;
3. Frequency and effectiveness of monitoring procedures;
4. Adequacy and regularity of the institution's training program;
5. Suitability of the compliance audit program for ensuring that:
   - the procedures address all regulatory provisions as applicable;
   - the work is accurate and comprehensive with respect to the institution's information sharing practices;
   - the frequency is appropriate;
   - conclusions are appropriately reached and presented to responsible parties;
   - steps are taken to correct deficiencies and to follow-up on previously identified deficiencies; and
6. Knowledge level of management and personnel.

E. Ascertain areas of risk associated with the financial institution's sharing practices (especially those within Section 13 and those that fall outside of the exceptions) and any weaknesses found within the compliance management program. Keep in mind any outstanding deficiencies identified in the audit for follow-up when completing the modules.

F. Based on the results of the foregoing initial procedures and discussions with management, determine which procedures if any should be completed in the applicable module, focusing on areas of particular risk. The selection of procedures to be employed depends upon the adequacy of the institution's compliance management system and level of risk identified. Each module contains a series of

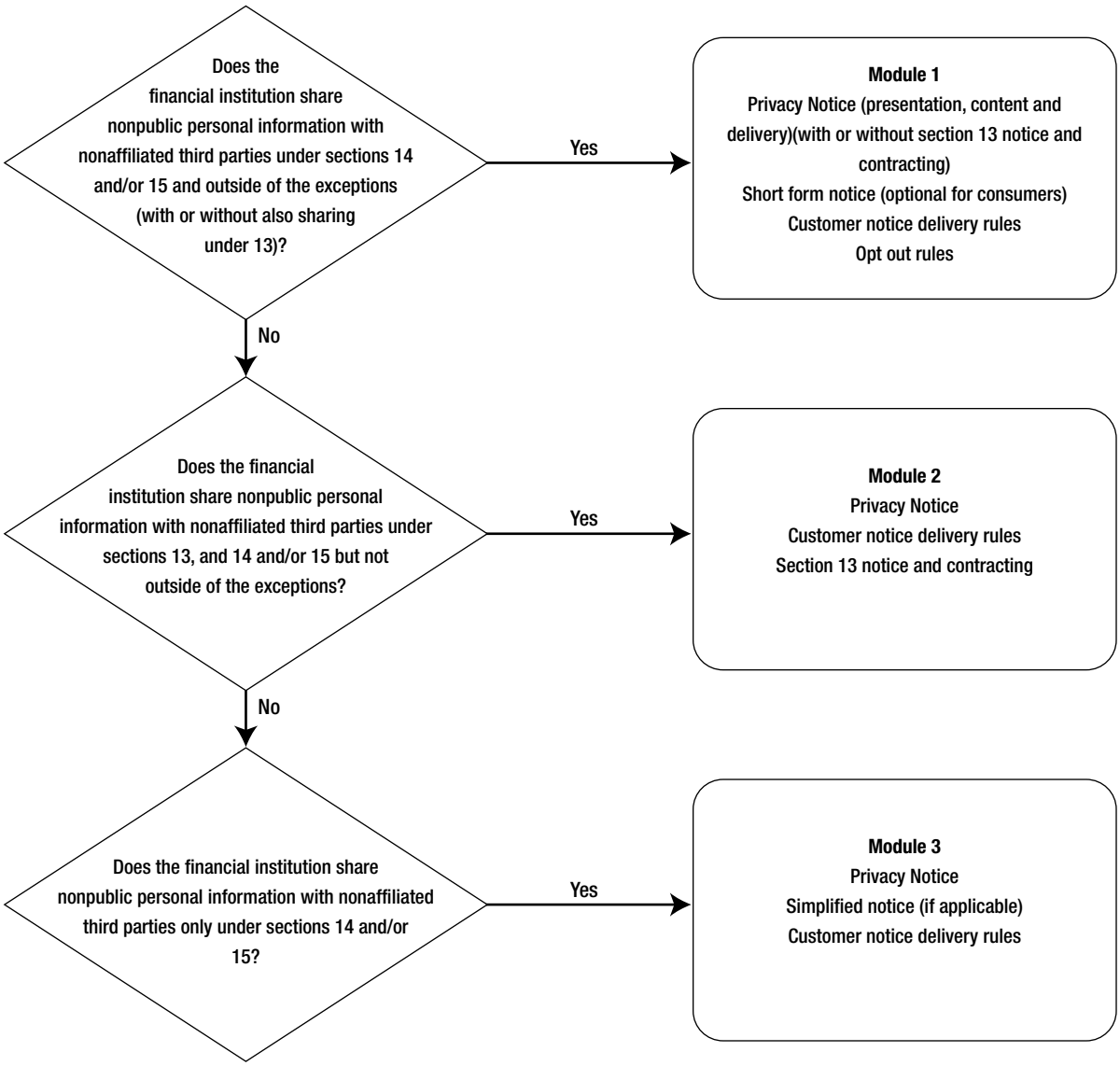
general instruction to verify compliance, cross-referenced to cites within the regulation. Additionally, there are cross-references to a more comprehensive checklist, which the examiner may use if needed to evaluate compliance in more detail.

G. Evaluate any additional information or documentation discovered during the course of the examination according to these procedures. Note that this may reveal new or different sharing practices necessitating reapplication of the Decision Trees and completion of additional or different modules.

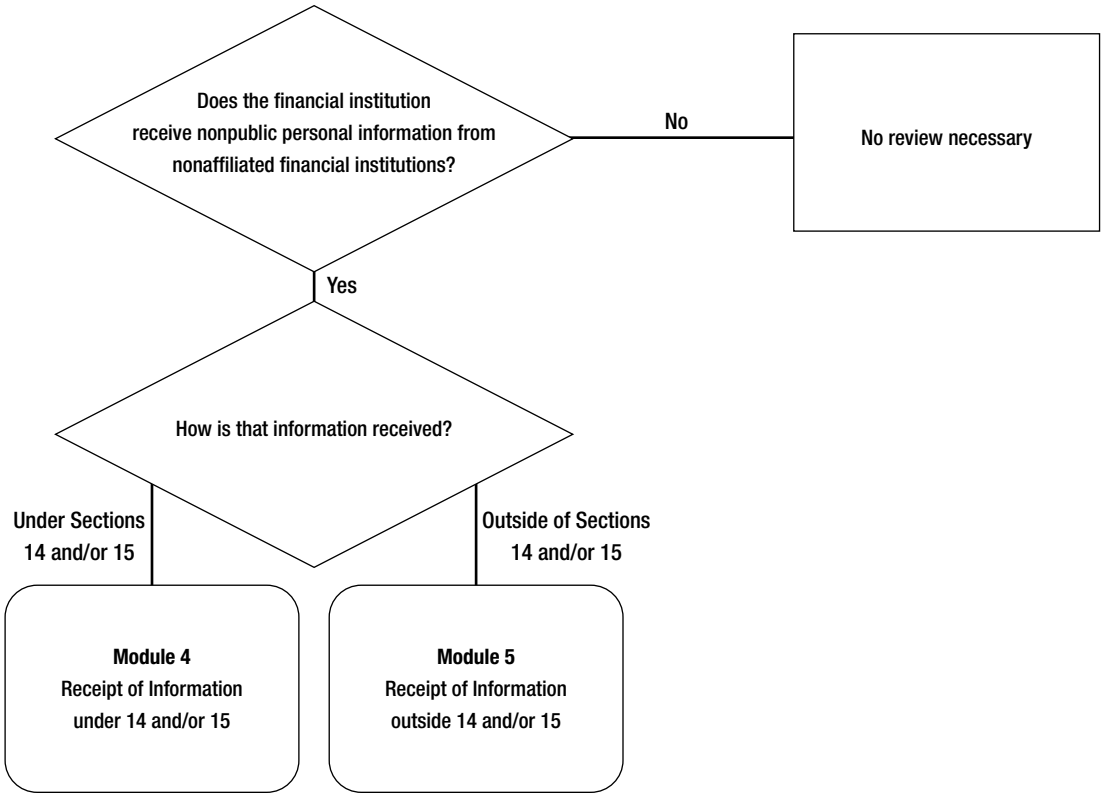
H. Formulate conclusions.

1. Summarize all findings.
2. For violation(s) noted, determine the cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other areas.
3. Identify action needed to correct violations and weaknesses in the institution's compliance system, as appropriate.
4. Discuss findings with management and obtain a commitment for corrective action.

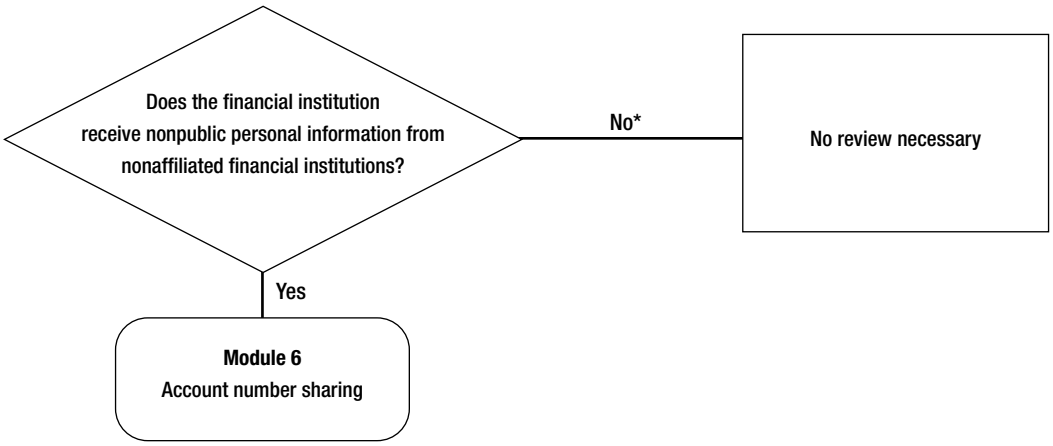
Privacy Notice and Opt Out Decision Tree



Reuse and Redisclosure of Nonpublic Personal Information Received from Nonaffiliated Financial Institutions Decision Tree (Sections 11(a) and 11(b))



Account Number Sharing Decision Tree (Section 12)



*This may include sharing of encrypted account numbers but not the decryption key.

Module 1

Sharing nonpublic personal information with nonaffiliated third parties under Sections 14 and/or 15 and outside of the exceptions (with or without also sharing under Section 13).

NOTE: Financial institutions whose practices fall within this category engage in the most expansive degree of information sharing permissible. Consequently, these institutions are held to the most comprehensive compliance standards imposed by the Privacy regulation.

A. Disclosure of Nonpublic Personal Information

1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of data shared between the institution and the third party both inside and outside of the exceptions. The sample should include a cross-section of relationships but should emphasize those that are higher risk in nature as determined by the initial procedures. Perform the following comparisons to evaluate the financial institution's compliance with disclosure limitations.
   a. Compare the categories of data shared and with whom the data were shared to those stated in the privacy notice and verify that what the institution tells consumers (customers and those who are not customers) in its notices about its policies and practices in this regard and what the institution actually does are consistent (§§10, 6).
   b. Compare the data shared to a sample of opt out directions and verify that only nonpublic personal information covered under the exceptions or from consumers (customers and those who are not customers) who chose not to opt out is shared (§10).
2. If the financial institution also shares information under Section 13, obtain and review contracts with nonaffiliated third parties that perform services for the financial institution not covered by the exceptions in section 14 or 15. Determine whether the contracts prohibit the third party from disclosing or using the information other than to carry out the purposes for which the information was disclosed. Note that the "grandfather" provisions of Section 18 apply to certain of these contracts (§13(a)).

B. Presentation, Content, and Delivery of Privacy Notices

1. Review the financial institution's initial, annual and revised notices, as well as any short-form notices that the institution may use for consumers who are not customers. Determine whether or not these notices:
   a. Are clear and conspicuous (§§3(b), 4(a), 5(a)(1), 8(a)(1));
   b. Accurately reflect the policies and practices used by the institution (§§4(a), 5(a)(1), 8(a)(1)). Note, this includes practices disclosed in the notices that exceed regulatory requirements; and
   c. Include, and adequately describe, all required items of information and contain examples as applicable (§6). Note that if the institution shares under Section 13 the notice provisions for that section shall also apply.
2. Through discussions with management, review of the institution's policies and procedures, and a sample of electronic or written consumer records where available, determine if the institution has adequate procedures in place to provide notices to consumers, as appropriate. Assess the following:
   a. Timeliness of delivery (§§4(a), 7(c), 8(a)); and
   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (§9).
   c. For customers only, review the timeliness of delivery (§§4(d), 4(e), 5(a)), means of delivery of annual notice (§9(c)), and accessibility of or ability to retain the notice (§9(e)).

C. Opt Out Right

1. Review the financial institution's opt out notices. An opt out notice may be combined with the institution's privacy notices. Regardless, determine whether the opt out notices:
   a. Are clear and conspicuous (§§3(b) and 7(a)(1));
   b. Accurately explain the right to opt out (§7(a)(1));
   c. Include and adequately describe the three required items of information (the institution's policy regarding disclosure of nonpublic personal information, the consumer's opt out right, and the means to opt out) (§7(a)(1)); and
   d. Describe how the institution treats joint consumers (customers and those who are not customers), as applicable (§7(d)).
2. Through discussions with management, review of the institution's policies and procedures, and a sample of electronic or written records where available, determine if the institution has adequate procedures in place to provide the opt out notice and comply with opt out directions of consumers (customers and those who are not customers), as appropriate. Assess the following:
   a. Timeliness of delivery (§10(a)(1));
   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (§9); and

c. Reasonableness of the opportunity to opt out (the time allowed to and the means by which the consumer may opt out) (§§10(a)(1)(iii), 10(a)(3)).

3. Adequacy of procedures to implement and track the status of a consumer's (customers and those who are not customers) opt out direction, including those of former customers (§7(e), (f), (g)).

D. Checklist Cross References—Module1

Regulation Section	Subject	Checklist Questions
4(a); 6(a, b, c, e); and 9(a, b, g)	Privacy notices (presentation, content, and delivery)	2, 8-11, 14, 18, 35, 36, 40
4(a, c, d, e); 5; and 9(c, e)	Customer notice delivery rules	1, 3-7, 37, 38
13	Section 13 notice and contracting rules (as applicable)	12, 47
6(d)	Short form notice rules (optional for consumers only)	15-17
7; 8; and 10	Opt out rules	19-34, 41-43
14, 15	Exceptions	48, 49, 50

Module 2

Sharing nonpublic personal information with nonaffiliated third parties under Sections 13, and 14 and/or 15, but not outside of these exceptions.

A. Disclosure of Nonpublic Personal Information

1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of data shared between the institution and the third party. The sample should include a cross-section of relationships but should emphasize those that are higher risk in nature as determined by the initial procedures. Perform the following comparisons to evaluate the financial institution's compliance with disclosure limitations.
   a. Compare the data shared and with whom the data were shared to ensure that the institution accurately categorized its information sharing practices and is not sharing nonpublic personal information outside the exceptions (§§13, 14, 15).
   b. Compare the categories of data shared and with whom the data were shared to those stated in the privacy notice and verify that what the institution tells consumers in its notices about its policies and practices in this regard and what the institution actually does are consistent (§§10, 6).
2. Review contracts with nonaffiliated third parties that perform services for the financial institution not covered by the exceptions in section 14 or 15. Determine whether the contracts adequately prohibit the third party from disclosing or using the information other than to carry out the purposes for which the information was disclosed. Note that the "grandfather" provisions of Section 18 apply to certain of these contracts. (§13(a))

B. Presentation, Content, and Delivery of Privacy Notices

1. Review the financial institution's initial and annual privacy notices. Determine whether or not they:
   a. Are clear and conspicuous (§§3(b), 4(a), 5(a)(1));
   b. Accurately reflect the policies and practices used by the institution (§§4(a), 5(a)(1)). Note, this includes practices disclosed in the notices that exceed regulatory requirements; and
   c. Include, and adequately describe, all required items of information and contain examples as applicable (§§6, 13).
2. Through discussions with management, review of the institution's policies and procedures, and a sample of electronic or written consumer records where available, determine if the institution has adequate procedures in place to provide notices to consumers, as appropriate. Assess the following:
   a. Timeliness of delivery (§4(a)); and
   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (§9).
   c. For customers only, review the timeliness of delivery (§§4(d), 4(e), and 5(a)), means of delivery of annual notice §9(c)), and accessibility of or ability to retain the notice (§9(e)).

C. Checklist Cross References—Module 2

Regulation Section	Subject	Checklist Questions
4(a); 6(a, b, c, e); and 9(a, b, g)	Privacy notices (presentation, content, and delivery)	2, 8-11, 14, 18, 35, 36, 40
4(a, c, d, e); 5; and 9(c, e)	Customer notice delivery rules	1, 3-7, 37, 38
13	Section 13 notice and contracting rules (as applicable)	12, 47
14, 15	Exceptions	48, 49, 50

Module 3

Sharing nonpublic personal information with nonaffiliated third parties only under Sections 14 and/or 15.

NOTE: This module applies only to customers.

A. Disclosure of Nonpublic Personal Information

1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of data shared between the institution and the third party.
   a. Compare the data shared and with whom the data were shared to ensure that the institution accurately states its information sharing practices and is not sharing nonpublic personal information outside the exceptions.

B. Presentation, Content, and Delivery of Privacy Notices

1. Obtain and review the financial institution's initial and annual notices, as well as any simplified notice that the institution may use. Note that the institution may only use the simplified notice when it does not also share nonpublic personal information with affiliates outside of Section 14 and 15 exceptions. Determine whether or not these notices:
   a. Are clear and conspicuous (§§3(b), 4(a), 5(a)(1));
   b. Accurately reflect the policies and practices used by the institution (§§4(a), 5(a)(1)). Note, this includes practices disclosed in the notices that exceed regulatory requirements; and
   c. Include, and adequately describe, all required items of information (§6).
2. Through discussions with management, review of the institution's policies and procedures, and a sample of electronic or written customer records where available, determine if the institution has adequate procedures in place to provide notices to customers, as appropriate. Assess the following:
   a. Timeliness of delivery (§§4(a), 4(d), 4(e), 5(a)); and
   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the customer agrees; or as a necessary step of a transaction) (§9) and accessibility of or ability to retain the notice (§9(e)).

C. Checklist Cross References—Module 3

Regulation Section	Subject	Checklist Questions
6	Customer notice content and presentation	13
6(c)(5);	Simplified notice content (optional)	1, 3-7, 37, 38
4(a, d, e); 5; and 9	Customer notice delivery process rules (as applicable)	1, 3-7, 35-40
14, 15	Exceptions	48, 49, 50

Module 4

Reuse & Redisclosure of nonpublic personal information received from a nonaffiliated financial institution under Sections 14 and/or 15.

A. Through discussions with management and review of the institution's procedures, determine whether the institution has adequate practices to prevent the unlawful redisclosure and reuse of the information where the institution is the recipient of nonpublic personal information (§11(a)).

B. Select a sample of data received from nonaffiliated financial institutions, to evaluate the financial institution's compliance with reuse and redisclosure limitations.
   1. Verify that the institution's redisclosure of the information was only to affiliates of the financial institution from which the information was obtained or to the institution's own affiliates, except as otherwise allowed in the step b below (§11(a)(1)(i) and (ii)).
   2. Verify that the institution only uses and shares the data pursuant to an exception in Sections 14 and 15 (§11(a)(1)(iii)).

C. Checklist Cross References—Module 4

Regulation Section	Subject	Checklist Questions
11(a)	Reuse and disclosure presentation	44

Module 5

Redisclosure of nonpublic personal information received from a nonaffiliated financial institution outside of Sections 14 and 15.

A. Through discussions with management and review of the institution's procedures, determine whether the institution has adequate practices to prevent the unlawful redisclosure of the information where the institution is the recipient of nonpublic personal information (§11(b)).

B. Select a sample of data received from nonaffiliated financial institutions and shared with others to evaluate the financial institution's compliance with redisclosure limitations.
   1. Verify that the institution's redisclosure of the information was only to affiliates of the financial institution from which the information was obtained or to the institution's own affiliates, except as otherwise allowed in the step b below (§11(b)(1)(i) and (ii)).
   2. If the institution shares information with entities other than those under step a above, verify that the institution's information sharing practices conform to those in the nonaffiliated financial institution's privacy notice (§11(b)(1)(iii)).
   3. Also, review the procedures used by the institution to ensure that the information sharing reflects the opt out status of the consumers of the nonaffiliated financial institution (§§10, 11(b)(1)(iii)).

C. Checklist Cross References—Module 5

Regulation Section	Subject	Checklist Questions
11(b)	Reuse and redisclosure	45

Module 6

Account number sharing.

A. If available, review a sample of telemarketer scripts used when making sales calls to determine whether the scripts indicate that the telemarketers have the account numbers of the institution's consumers (§12).

B. Obtain and review a sample of contracts with agents or service providers to whom the financial institution discloses account numbers for use in connection with marketing the institution's own products or services. Determine whether the institution shares account numbers with nonaffiliated third parties only to perform marketing for the institution's own products and services. Ensure that the contracts do not authorize these nonaffiliated third parties to directly initiate charges to customer's accounts (§12(b)(1)).

C. Obtain a sample of materials and information provided to the consumer upon entering a private label or affinity credit card program. Determine if the participants in each program are identified to the customer when the customer enters into the program (§12(b)(2)).

D. Checklist Cross References—Module 6

Regulation Section	Subject	Checklist Questions
12	Account number sharing	46

Examination Checklist

Subpart A	Yes	No
Initial Privacy Notice		
1. Does the institution provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to all customers not later than when the customer relationship is established, other than as allowed in paragraph (e) of section four (4) of the regulation? [§4(a)(1))] *NOTE: no notice is required if nonpublic personal information is disclosed to nonaffiliated third parties only under an exception in Sections 14 and 15, and there is no customer relationship. [§4(b)] With respect to credit relationships, an institution establishes a customer relationship when it originates a consumer loan. If the institution subsequently sells the servicing rights to the loan to another financial institution, the customer relationship transfers with the servicing rights. [§4(c)]*		
2. Does the institution provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to all consumers, who are not customers, before any nonpublic personal information about the consumer is disclosed to a nonaffiliated third party, other than under an exception in §§14 or 15? [§4(a)(2)]		
3. Does the institution provide to existing customers, who obtain a new financial product or service, an initial privacy notice that covers the customer's new financial product or service, if the most recent notice provided to the customer was not accurate with respect to the new financial product or service? [§4(d)(1)]		
4. Does the institution provide initial notice after establishing a customer relationship only if:		
a. the customer relationship is not established at the customer's election; [§4(e)(1)(i)] or		
b. to do otherwise would substantially delay the customer's transaction (e.g. in the case of a telephone application), and the customer agrees to the subsequent delivery? [§4 (e)(1)(ii)]		
5. When the subsequent delivery of a privacy notice is permitted, does the institution provide notice after establishing a customer relationship within a reasonable time? [§4(e)]		
Annual Privacy Notice		
6. Does the institution provide a clear and conspicuous notice that accurately reflects its privacy policies and practices at least annually (that is, at least once in any period of 12 consecutive months) to all customers, throughout the customer relationship? [§5(a)(1)and (2)] *NOTE: annual notices are not required for former customers. [§5(b)(1)and (2)]*		
7. Does the institution provide an annual privacy notice to each customer whose loan the institution owns the right to service? [§§5(c), 4(c)(2)]		
Content of Privacy Notices		
8. Do the initial, annual, and revised privacy notices include each of the following, as applicable:		
a. the categories of nonpublic personal information that the institution collects; [§6(a)(1)]		
b. the categories of nonpublic personal information that the institution discloses; [§6(a)(2)]		
c. the categories of affiliates and nonaffiliated third parties to whom the institution discloses nonpublic personal information, other than parties to whom information is disclosed under an exception in §14 or §15; [§6(a)(3)]		

Examination Checklist — Subpart A (continued)	Yes	No
Content of Privacy Notices (continued)		
d. the categories of nonpublic personal information disclosed about former customers, and the categories of affiliates and nonaffiliated third parties to whom the institution discloses that information, other than those parties to whom the institution discloses information under an exception in §14 or §15; [§6(a)(4)]		
e. if the institution discloses nonpublic personal information to a nonaffiliated third party under §13, and no exception under §14 or §15 applies, a separate statement of the categories of information the institution discloses and the categories of third parties with whom the institution has contracted; [§6(a)(5)]		
f. an explanation of the opt out right, including the method(s) of opt out that the consumer can use at the time of the notice; [§6(a)(6)]		
g. any disclosures that the institution makes under §603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA); [§6(a)(7)]		
h. the institution's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; [§6(a)(8)] and		
i. a general statement--with no specific reference to the exceptions or to the third parties--that the institution makes disclosures to other nonaffiliated third parties as permitted by law? [§6(a)(9), (b)] *NOTE: sample clauses for these items appear in Appendix A of the Regulation*		
9. Does the institution list the following categories of nonpublic personal information that it collects, as applicable:		
a. information from the consumer; [§6(c)(1)(i)]		
b. information about the consumer's transactions with the institution or its affiliates; [§6(c)(1)(ii)]		
c. information about the consumer's transactions with nonaffiliated third parties; [§6(c)(1)(iii)] and		
d. information from a consumer reporting agency? [§6(c)(1)(iv)]		
10. Does the institution list the following categories of nonpublic personal information that it discloses, as applicable, and a few examples of each, or alternatively state that it reserves the right to disclose all the nonpublic personal information that it collects:		
a. information from the consumer;		
b. information about the consumer's transactions with the institution or its affiliates;		
c. information about the consumer's transactions with nonaffiliated third parties; and		
d. information from a consumer reporting agency? [§6(c)(2)] *NOTE: examples are recommended under §6(c)(2) although not under §6(c)(1).*		

Examination Checklist — Subpart A (continued)	Yes	No
Content of Privacy Notices (continued)		
11. Does the institution list the following categories of affiliates and nonaffiliated third parties to whom it discloses information, as applicable, and a few examples to illustrate the types of the third parties in each category:		
a. financial service providers; [§6(c)(3)(i)]		
b. non-financial companies; [§6(c)(3)(ii)] and		
c. others? [§6(c)(3)(iii)]		
12. Does the institution make the following disclosures regarding service providers and joint marketers to whom it discloses nonpublic personal information under §13:		
a. as applicable, the same categories and examples of nonpublic personal information disclosed as described in paragraphs (a)(2) and (c)(2) of section six (6) (*see* questions 8b and 10); and [§6(c)(4)(i)]		
b. that the third party is a service provider that performs marketing on the institution's behalf or on behalf of the institution and another financial institution; [§6(c)(4)(ii)(A)] or		
c. that the third party is a financial institution with which the institution has a joint marketing agreement? [§6(c)(4)(ii)(B)]		
13. If the institution does not disclose nonpublic personal information, and does not reserve the right to do so, other than under exceptions in §14 and §15, does the institution provide a simplified privacy notice that contains at a minimum:		
a. a statement to this effect;		
b. the categories of nonpublic personal information it collects;		
c. the policies and practices the institution uses to protect the confidentiality and security of nonpublic personal information; and		
d. a general statement that the institution makes disclosures to other nonaffiliated third parties as permitted by law? [§6(c)(5)] *NOTE: use of this type of simplified notice is optional; an institution may always use a full notice.*		
14. Does the institution describe the following about its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information:		
a. who is authorized to have access to the information; and [§6(c)(6)(i)]		
b. whether security practices and policies are in place to ensure the confidentiality of the information in accordance with the institution's policy? [§6(c)(6)(ii)] *NOTE: the institution is not required to describe technical information about the safeguards used in this respect.*		

Examination Checklist — Subpart A (continued)	Yes	No
Content of Privacy Notices (continued)		
15. If the institution provides a short-form initial privacy notice with the opt out notice, does the institution do so only to consumers with whom the institution does not have a customer relationship? [§6(d)(1)]		
16. If the institution provides a short-form initial privacy notice according to §6(d)(1), does the short-form initial notice:		
a. conform to the definition of "clear and conspicuous"; [§6(d)(2)(i)]		
b. state that the institution's full privacy notice is available upon request; [§6(d)(2)(ii)] and		
c. explain a reasonable means by which the consumer may obtain the notice? [§6(d)(2)(iii)] *NOTE: the institution is not required to deliver the full privacy notice with the short-form initial notice. [§6(d)(3)]*		
17. Does the institution provide consumers who receive the short-form initial notice with a reasonable means of obtaining the longer initial notice, such as:		
a. a toll-free telephone number that the consumer may call to request the notice; [§6(d)(4)(i)] or		
b. for the consumer who conducts business in person at the institution's office, having copies available to provide immediately by hand-delivery? [§6(d)(4)(ii)]		
18. If the institution, in its privacy policies, reserves the right to disclose nonpublic personal information to nonaffiliated third parties in the future, does the privacy notice include, as applicable, the:		
a. categories of nonpublic personal information that the financial institution reserves the right to disclose in the future, but does not currently disclose; [§6(e)(1)] and		
b. categories of affiliates or nonaffiliated third parties to whom the financial institution reserves the right in the future to disclose, but to whom it does not currently disclose, nonpublic personal information? [§6(e)(2)]		
Opt Out Notice		
19. If the institution discloses nonpublic personal information about a consumer to a nonaffiliated third party, and the exceptions under §§13-15 do not apply, does the institution provide the consumer with a clear and conspicuous opt out notice that accurately explains the right to opt out? [§7(a)(1)]		
20. Does the opt out notice state:		
a. that the institution discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third party; [§7(a)(1)(i)]		
b. that the consumer has the right to opt out of that disclosure; [§7(a)(1)(ii)] and		
c. a reasonable means by which the consumer may opt out? [§7(a)(1)(iii)]		

Examination Checklist — Subpart A (continued)	Yes	No
Opt Out Notice (continued)		
21. Does the institution provide the consumer with the following information about the right to opt out:		
a. all the categories of nonpublic personal information that the institution discloses or reserves the right to disclose; [§7(a)(2)(i)(A)]		
b. all the categories of nonaffiliated third parties to whom the information is disclosed; [§7(a)(2)(i)(A)];		
c. that the consumer has the right to opt out of the disclosure of that information; [§7(a)(2)(i)(A)] and		
d. the financial products or services that the consumer obtains to which the opt out direction would apply? [§7(a)(2)(i)(B)]		
22. Does the institution provide the consumer with at least one of the following reasonable means of opting out, or with another reasonable means:		
a. check-off boxes prominently displayed on the relevant forms with the opt out notice; [§7(a)(2)(ii)(A)]		
b. a reply form included with the opt out notice; [§7(a)(2)(ii)(B)]		
c. an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the institution's web site, if the consumer agrees to the electronic delivery of information; [§7(a)(2)(ii)(C)] or		
d. a toll-free telephone number? [§7(a)(2)(ii)(D)] *NOTE: the institution may require the consumer to use one specific means, as long as that means is reasonable for that consumer. [§7(a)(iv)]*		
23. If the institution delivers the opt out notice after the initial notice, does the institution provide the initial notice once again with the opt out notice? [§7(c)]		
24. Does the institution provide an opt out notice, explaining how the institution will treat opt out directions by the joint consumers, to at least one party in a joint consumer relationship? [§7(d)(1)]		
25. Does the institution permit each of the joint consumers in a joint relationship to opt out? [§7(d)(2)]		
26. Does the opt out notice to joint consumers state that either:		
a. the institution will consider an opt out by a joint consumer as applying to all associated joint consumers; [§7(d)(2)(i)] or		
b. each joint consumer is permitted to opt out separately? [§7(d)(2)(ii)]		
27. If each joint consumer may opt out separately, does the institution permit:		
a. one joint consumer to opt out on behalf of all of the joint consumers; [§7(d)(3)]		
b. the joint consumers to notify the institution in a single response; [§7(d)(5)] and		

Examination Checklist — Subpart A (continued)	Yes	No
Opt Out Notice (continued)		
c. each joint consumer to opt out either for himself or herself, and/or for another joint consumer? [§7(d)(5)]		
28. Does the institution refrain from requiring all joint consumers to opt out before implementing any opt out direction with respect to the joint account? [§7(d)(4)]		
29. Does the institution comply with a consumer's direction to opt out as soon as is reasonably practicable after receiving it? [§7(e)]		
30. Does the institution allow the consumer to opt out at any time? [§7(f)]		
31. Does the institution continue to honor the consumer's opt out direction until revoked by the consumer in writing, or, if the consumer agrees, electronically? [§7(g)(1)]		
32. When a customer relationship ends, does the institution continue to apply the customer's opt out direction to the nonpublic personal information collected during, or related to, that specific customer relationship (but not to new relationships, if any, subsequently established by that customer)? [§7(g)(2)]		
Revised Notices		
33. Except as permitted by §§13-15, does the institution refrain from disclosing any nonpublic personal information about a consumer to a nonaffiliated third party, other than as described in the initial privacy notice provided to the consumer, unless:		
a. the institution has provided the consumer with a clear and conspicuous revised notice that accurately describes the institution's privacy policies and practices; [§8(a)(1)]		
b. the institution has provided the consumer with a new opt out notice; [§8(a)(2)]		
c. the institution has given the consumer a reasonable opportunity to opt out of the disclosure, before disclosing any information; [§8(a)(3)] and		
d. the consumer has not opted out? [§8(a)(4)]		
34. Does the institution deliver a revised privacy notice when it:		
a. discloses a new category of nonpublic personal information to a nonaffiliated third party; [§8(b)(1)(i)]		
b. discloses nonpublic personal information to a new category of nonaffiliated third party; [§8(b)(1)(ii)] or		
c. discloses nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure? [§8(b)(1)(iii)] *NOTE: a revised notice is not required if the institution adequately described the nonaffiliated third party or information to be disclosed in the prior privacy notice. [§8(b)(2)]*		

Examination Checklist — Subpart A (continued)	Yes	No
Delivery Methods		
35. Does the institution deliver the privacy and opt out notices, including the short-form notice, so that the consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically? [§9(a)]		
36 Does the institution use a reasonable means for delivering the notices, such as:		
a. hand-delivery of a printed copy; [§9(b)(1)(i)]		
b. mailing a printed copy to the last known address of the consumer; [§9(b)(1)(ii)]		
c. for the consumer who conducts transactions electronically, clearly and conspicuously posting the notice on the institution's electronic site and requiring the consumer to acknowledge receipt as a necessary step to obtaining a financial product or service; [§9(b)(1)(iii)] or		
d. for isolated transactions, such as ATM transactions, posting the notice on the screen and requiring the consumer to acknowledge receipt as a necessary step to obtaining the financial product or service? [§9(b)(1)(iv)] *NOTE: insufficient or unreasonable means of delivery include: exclusively oral notice, in person or by telephone; branch or office signs or generally published advertisements; and electronic mail to a customer who does not obtain products or services electronically. [§9 (b)(2)(i) and (ii), and (d)]*		
37. For annual notices only, if the institution does not employ one of the methods described in question 36, does the institution employ one of the following reasonable means of delivering the notice such as:		
a. for the customer who uses the institution's web site to access products and services electronically and who agrees to receive notices at the web site, continuously posting the current privacy notice on the web site in a clear and conspicuous manner; [§9(c)(1)] or		
b. for the customer who has requested the institution refrain from sending any information about the customer relationship, making copies of the current privacy notice available upon customer request? [§9(c)(2)]		
38. For customers only, does the institution ensure that the initial, annual, and revised notices may be retained or obtained later by the customer in writing, or if the customer agrees, electronically? [§9(e)(1)]		
39. Does the institution use an appropriate means to ensure that notices may be retained or obtained later, such as:		
a. hand-delivery of a printed copy of the notice; [§9(e)(2)(i)]		
b. mailing a printed copy to the last known address of the customer; [§9(e)(2)(ii)] or		
c. making the current privacy notice available on the institution's web site (or via a link to the notice at another site) for the customer who agrees to receive the notice at the web site? [§9(e)(2)(iii)]		
40. Does the institution provide at least one initial, annual, and revised notice, as applicable, to joint consumers? [§9(g)]		

Examination Checklist — Subpart B	Yes	No
Limits on Disclosure to Nonaffiliated Third Parties		
41. Does the institution refrain from disclosing any nonpublic personal information about a consumer to a nonaffiliated third party, other than as permitted under §§13-15, unless:		
a. it has provided the consumer with an initial notice; [§10(a)(1)(i)]		
b. it has provided the consumer with an opt out notice; [§10(a)(1)(ii)]		
c. it has given the consumer a reasonable opportunity to opt out before the disclosure; [§10(a)(1)(iii)] and		
d. the consumer has not opted out? [§10(a)(1)(iv)] *NOTE: this disclosure limitation applies to consumers as well as to customers [§10(b)(1)], and to all nonpublic personal information regardless of whether collected before or after receiving an opt out direction. [§10(b)(2)]*		
42. Does the institution provide the consumer with a reasonable opportunity to opt out such as by:		
a. mailing the notices required by §10 and allowing the consumer to respond by toll-free telephone number, return mail, or other reasonable means (*see* question 22) within 30 days from the date mailed; [§10(a)(3)(i)]		
b. where the consumer opens an on-line account with the institution and agrees to receive the notices required by §10 electronically, allowing the consumer to opt out by any reasonable means (*see* question 22) within 30 days from consumer acknowledgement of receipt of the notice in conjunction with opening the account; [§10(a)(3)(ii)] or		
c. for isolated transactions, providing the notices required by §10 at the time of the transaction and requesting that the consumer decide, as a necessary part of the transaction, whether to opt out before the completion of the transaction? [§10(a)(3)(iii)]		
43. Does the institution allow the consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out? [§10(c)] *NOTE: an institution may allow partial opt outs in addition to, but may not allow them instead of, a comprehensive opt out.*		
Limits on Redisclosure and Reuse of Innformation		
44. If the institution receives information from a nonaffiliated financial institution under an exception in §14 or §15, does the institution refrain from using or disclosing the information except:		
a. to disclose the information to the affiliates of the financial institution from which it received the information; [§11(a)(1)(i)]		
b. to disclose the information to its own affiliates, which are in turn limited by the same disclosure and use restrictions as the recipient institution; [§11(a)(1)(ii)] and		
c. to disclose and use the information pursuant to an exception in §14 or §15 in the ordinary course of business to carry out the activity covered by the exception under which the information was received? [§11(a)(1)(iii)] *NOTE: the disclosure or use described in section c of this question need not be directly related to the activity covered by the applicable exception. For instance, an institution receiving information for fraud-prevention purposes could provide the information to its auditors. But "in the ordinary course of business" does not include marketing. [§11(a)(2)]*		

Examination Checklist — Subpart B (continued)	Yes	No
Limits on Redisclosure and Reuse of Information (continued)		
45. If the institution receives information from a nonaffiliated financial institution other than under an exception in §14 or §15, does the institution refrain from disclosing the information except:		
a. to the affiliates of the financial institution from which it received the information; [§11(b)(1)(i)]		
b. to its own affiliates, which are in turn limited by the same disclosure restrictions as the recipient institution; [§11(b)(1)(ii)] and		
c. to any other person, if the disclosure would be lawful if made directly to that person by the institution from which the recipient institution received the information? [§11(b)(1)(iii)]		
Limits on Sharing Account Number Innformation for Marketing Purposes		
46. Does the institution refrain from disclosing, directly or through affiliates, account numbers or similar forms of access numbers or access codes for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party (other than to a consumer reporting agency) for telemarketing, direct mail or electronic mail marketing to the consumer, except:		
a. to the institution's agents or service providers solely to market the institution's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; [§12(b)(1)] or		
b. to a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program? [§12(b)(2)] *NOTE: an "account number or similar form of access number or access code" does not include numbers in encrypted form, so long as the institution does not provide the recipient with a means of decryption. [§12(c)(1)] A transaction account does not include an account to which third parties cannot initiate charges. [§12(c)(2)]*		

Examination Checklist — Subpart C	Yes	No
Exception to Opt Out Requirements for Service Providers and Joint Marketing		
47. If the institution discloses nonpublic personal information to a nonaffiliated third party without permitting the consumer to opt out, do the opt out requirements of §7 and §10, and the revised notice requirements in §8, not apply because:		
a. the institution disclosed the information to a nonaffiliated third party who performs services for or functions on behalf of the institution (including joint marketing of financial products and services offered pursuant to a joint agreement as defined in paragraph (b) of §13); [§13(a)(1)]		
b. the institution has provided consumers with the initial notice; [§13(a)(1)(i)] and		
c. the institution has entered into a contract with that party prohibiting the party from disclosing or using the information except to carry out the purposes for which the information was disclosed, including use under an exception in §14 or §15 in the ordinary course of business to carry out those purposes? [§13(a)(1)(ii)]		
Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions		
48. If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in §4(a)(2), opt out in §§7 and 10, revised notice in §8, and for service providers and joint marketing in §13, not apply because the information is disclosed as necessary to effect, administer, or enforce a transaction that the consumer requests or authorizes, or in connection with:		
a. servicing or processing a financial product or service requested or authorized by the consumer; [§14(a)(1)]		
b. maintaining or servicing the consumer's account with the institution or with another entity as part of a private label credit card program or other credit extension on behalf of the entity; or [§14(a)(2)]		
c. a proposed or actual securitization, secondary market sale (including sale of servicing rights) or other similar transaction related to a transaction of the consumer? [§14(a)(3)]		
49. If the institution uses a Section 14 exception as necessary to effect, administer, or enforce a transaction, is it :		
a. required, or is one of the lawful or appropriate methods to enforce the rights of the institution or other persons engaged in carrying out the transaction or providing the product or service; [§14(b)(1)] or		
b. required, or is a usual, appropriate, or acceptable method to:[§14(b)(2)]		
i. carry out the transaction or the product or service business of which the transaction is a part, including recording, servicing, or maintaining the consumer's account in the ordinary course of business; [§14(b)(2)(i)]		
ii. administer or service benefits or claims; [§14(b)(2)(ii)]		

Examination Checklist — Subpart C (continued)	Yes	No
Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions (continued)		
iii. confirm or provide a statement or other record of the transaction or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker; [§14(b)(2)(iii)]		
iv. accrue or recognize incentives or bonuses; [§14(b)(2)(iv)]		
v. underwrite insurance or for reinsurance or for certain other purposes related to a consumer's insurance; [§14(b)(2)(v)] or		
vi. in connection with:		
(1) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid by using a debit, credit, or other payment card, check, or account number, or by other payment means; [§14(b)(2)(vi)(A)]		
(2) the transfer of receivables, accounts or interests therein; [§14(b)(2)(vi)(B)] or		
(3) the audit of debit, credit, or other payment information? [§14(b)(2)(vi)(C)]		
Other Exceptions to Notice and Opt Out Requirements		
50. If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in §4(a)(2), opt out in §§7 and 10, revised notice in §8, and for service providers and joint marketers in §13, not apply because the institution makes the disclosure:		
a. with the consent or at the direction of the consumer; [§15(a)(1)]		
b.		
i. to protect the confidentiality or security of records; [§15(a)(2)(i)]		
ii. to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; [§15(a)(2)(ii)]		
iii. for required institutional risk control or for resolving consumer disputes or inquiries; [§15(a)(2)(iii)]		
iv. to persons holding a legal or beneficial interest relating to the consumer; [§15(a)(2)(iv)] or		
v. to persons acting in a fiduciary or representative capacity on behalf of the consumer; [§15(a)(2)(v)]		
c. to insurance rate advisory organizations, guaranty funds or agencies, agencies rating the institution, persons assessing compliance, and the institution's attorneys, accountants, and auditors; [§15(a)(3)]		
d. in compliance with the Right to Financial Privacy Act, or to law enforcement agencies; [§15(a)(4)]		
e. to a consumer reporting agency in accordance with the FCRA or from a consumer report reported by a consumer reporting agency; [§15(a)(5)]		

Examination Checklist — Subpart C (continued)	Yes	No
Other Exceptions to Notice and Opt Out Requirements (continued)		
f. in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit, if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; [§15(a)(6)]		
g. to comply with Federal, state, or local laws, rules, or legal requirements; [§15(a)(7)(i)]		
h. to comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; [§15(a)(7)(ii)] or		
i. to respond to judicial process or government regulatory authorities having jurisdiction over the institution for examination, compliance, or other purposes as authorized by law? [§15(a)(7)(iii)] *NOTE: the regulation gives the following as an example of the exception described in section a of this question: "A consumer may specifically consent to [an institution's] disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to [the institution] for a mortgage so that the insurance company can offer homeowner's insurance to the consumer."*		

References

Listed below are links to several Privacy resources, including the official examination procedures and the examination job-aid.

FDIC Part 332: Privacy of Consumer Financial Information
http://www.fdic.gov/regulations/laws/rules/2000-5550.html

FIL 01-46: Examination Procedures
http://www.fdic.gov/news/news/financial/2001/FIL0146.html

FDIC Legal Advisory Opinions
http://www.fdic.gov/regulations/laws/opinions/index.html

Press Release: Frequently Asked Questions for the Privacy Regulation
http://www.fdic.gov/news/news/press/2001/pr9301a.html

DSC RD Memo 03-2001: Privacy Rule Handbook
http://www.fdic.gov/news/news/financial/2001/fil0103.html

Job Aids

Examination Job Aid
http://fdic01/division/dsc/compliance/privacy/PrivacyComplianceJobAid.htm

FDIC Staff Response to Questions Regarding the Privacy of Consumer Financial Information
http://fdic01/division/dsc/compliance/privacy/FDICStaffQA71101.html

Children's Online Privacy Protection Act (COPPA)[1]

Introduction

COPPA was enacted to prohibit unfair and deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children under the age of 13 in an online environment. Generally, the Act requires operators of Web sites or online services directed to children, or that have actual knowledge that they are collecting or maintaining personal information from children online, to provide certain notices and obtain parental consent to collect, use, or disclose information about children. The FDIC is granted enforcement authority under the Act. Federal Trade Commission regulations (16 CFR 312) that implement COPPA became effective April 21, 2000.

Examiners should consider conducting a compliance review using these procedures only when an institution is operating a Web site or online service directed to children that collects or maintains personal information about children, or operating a general audience Web site or online service and knowingly collecting or maintaining personal information from a child online.

Examination Objectives

1. To determine that reliance can be placed on a financial institution's compliance management policies, internal controls, and procedures for ensuring the institution's compliance with the COPPA regulation.
2. To require effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

Examination Procedures

1. Determine whether the institution operates a Web site or online service directed to children that collects or maintains personal information about them, or operates a general audience Web site or online service and knowingly collects or maintains personal information from a child online.
2. If the financial institution does not operate a Web site or online service directed to children that collects or maintains personal information about them, and does not knowingly collect or maintain personal information from a child online, it is not subject to COPPA. No further examination is necessary.
3. If the financial institution does operate a Web site or online service directed to children that collects or maintains personal information about them, or knowingly collects or maintains personal information from a child online, it is subject to COPPA. Continue with step 4 below.
4. Determine whether the institution participates in an FTC-approved, self-regulatory program. If it does, no further examination is necessary. If it does not participate in such a program, continue with the procedures below.
5. Assess the quality of the institution's compliance risk management by determining whether procedures and controls ensure compliance with COPPA. Consider the following, as they pertain to COPPA:
   a. Knowledge level of management and staff;
   b. Board of Directors adoption, and management implementation, of policies and procedures;
   c. Adequacy of the institution's training program;
   d. Frequency of compliance monitoring;
   e. Effectiveness of the compliance audit program to detect and correct compliance deficiencies; and
   f. Appropriate and timely handling of consumer complaints.
6. Identify any weaknesses in compliance management policies, procedures, or controls, and the areas and level of risk associated with the institution's Web site or online service subject to COPPA.
7. Formulate conclusions.
   a. Summarize all findings, and describe the general assessment of the quality of the institution's compliance management program for implementing COPPA.
   b. Discuss findings with management and obtain a commitment for corrective action, as necessary.

References

Statute: Children's Online Privacy Protection Act
http://www.ftc.gov/ogc/coppa1.pdf

Regulation: Children's Online Privacy Protection Rule
http://www.ftc.gov/os/1999/10/64fr59888.htm

1 This section fully incorporates the examination procedures issued under DCA RD Memo 01-010: Examination Procedures for Childrens' Online Privacy Protection Act.

(This page intentionally left blank.)

Right to Financial Privacy Act

Introduction

The 1978 Right to Financial Privacy Act (RFPA) establishes specific procedures that federal government authorities must follow in order to obtain information from a financial institution about a customer's financial records. Generally, these requirements include obtaining subpoenas, notifying the customer of the request, and providing the customer with an opportunity to object. The Act imposes related limitations and duties on financial institutions prior to the release of information requested by federal authorities. For purposes of RFPA, a customer is defined as any person or representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name. "Person" is defined by the RFPA as an individual or a partnership of five or few individuals. Therefore, restrictions in the Act do not apply to the financial records of corporations or partnerships with six or more partners. The RFPA has been amended several times, most recently in 2001, to permit greater access without customer notice to customer information requested for criminal law enforcement purposes and for certain intelligence activities.

Examination Objective

The objective of the examination is to ensure that the financial institution has procedures in place to ensure compliance with the RFPA, and to test whether its practices conform to RFPA.

Examination Procedures

1. Determine whether the financial institution has established procedures and internal controls for fulfilling requests by government authorities for a customer's financial records to ensure that all requests are handled in compliance with the Act. (Section 1100)
2. Determine whether the financial institution has received any requests covered by the RFPA for a customer's financial records since the last compliance examination. (1103, 1105, 1106, 1107, 1108, 1114)

   NOTE: RFPA does not apply to prohibit or limit the FDIC's disclosure of financial information to state authorities, including banking, law enforcement and other state agencies such as appraisal certification boards.

   NOTE: RFPA does not prohibit the FDIC from providing DOJ with "raw" CRA census-tract data from banks' annual CRA reports even if DOJ used the CRA data to assist in enforcing anti-trust or other public laws. The FDIC should furnish DOJ with "raw" CRA data only in conjunction or consultation with the other federal banking agencies.

If the financial institution has received such requests since the last compliance examination:

3. Determine whether the financial institution provided a customer's financial records to government authorities only after receiving the proper written certification. (1105, 1106, 1107, 1108)
4. Determine whether internal procedures require that the financial institution refrain from requiring a customer's authorization for disclosure of financial records as a condition of doing business. (1103(d)(2) and 1104(b))
5. Determine whether the financial institution keeps appropriate records of instances when a customer's records are disclosed to the government authority upon authorization by the customer, including a copy of the request and the identity of the government authority. (1104(c) and 1113(h)(6))
6. Determine whether the financial institution provides the customer a copy of the records upon request (unless a court order has been obtained blocking such access). (1104(c) and 1113(h)(6))
7. Determine whether the financial institution maintains appropriate records of all disclosures of a customer's records made to a government authority in connection with a government loan, guaranty, or insurance program.
8. Determine whether the financial institution allows a customer to examine these records upon request. (1113(h)(6))

References

Right to Financial Privacy Act of 1978:
12 USC §§3401 – 3422
http://www.fdic.gov/regulations/laws/rules/6500-2550.html#6500firaircao1978

Job Aids

The following is a workpaper template and instructions for its use.

General Instructions for Workpapers

1. Enter requested information on worksheet(s). If information is not available or disclosure is not applicable, enter "N/A."
2. Use the Comments and Violations Section:
   - For apparent violations (for example, subsequent disclosures were not provided, etc.).
   - Any issues requiring additional comments or review/follow-up.

Clearly state violations. Highlight or mark in red for easy reference.

NOTE: Document only those instances where violations or issues worthy of comment are present.

Right to Financial Privacy Worksheet

1. Enter the financial institution's:
   - Name
   - Cert. #
   - Branch
   - Examination date
   - Examiner-in-Charge
   - Name of the individual who actually completes the workpaper
2. Enter the name of the customer.
3. Enter the types of accounts involved in the Federal government request, for example, loan, deposit, etc.
4. Identify the Federal government authority involved in the request.
5. Identify whether financial information was given out by customer authorization and the bank maintains the required information for customer review when allowed.
6. Indicate whether the financial institution had proper written certification from Federal government authorities prior to releasing financial information.

Examination Worksheet—Right to Financial Privacy

Bank:	Exam Date:	EIC:
Branch:	Prepared by:	Cert#:

Accounts Customer	Government Involved	Cust. Authority	Agency Authority	Comments & Violations

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003[1]

Introduction

Under Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM or Act)[2], the Federal Trade Commission (FTC) is charged with issuing regulations for implementing CAN-SPAM.[3] The FTC has issued regulations, effective as of March 28, 2005, that provide criteria to determine the primary purpose of electronic mail (e-mail) messages. The FTC has also issued regulations that contain criteria pertaining to warning labels on sexually oriented materials, which became effective as of May 19, 2004.

The goals of the act are to:

- Reduce spam and unsolicited pornography by prohibiting senders of unsolicited commercial e-mail messages from disguising the source and content of their messages.
- Give consumers the choice to cease receiving a sender's unsolicited commercial e-mail messages.

Compliance authority was expressly granted to the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Office of Thrift Supervision to be enforced under Section 8 of the Federal Deposit Insurance Act. The National Credit Union Association was granted authority through the Federal Credit Union Act 12 USC 1751.

The FTC has researched and determined that a "Do Not Spam" registry (similar to the highly effective "Do Not Call" registry) would not be effective or practicable at this time.

Key Definitions

"Affirmative Consent" (usage: commercial e-mail messages)

- The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and
- If the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's e-mail address could be transferred to such other party for the purpose of initiating commercial e-mail messages.

"Commercial E-mail Message" Any e-mail message the primary purpose of which is to advertise or promote for a commercial purpose, a commercial product or service (including content on the Internet). An e-mail message would not be considered to be a commercial e-mail message solely because such message includes a reference to a commercial entity that serves to identify the sender or a reference or link to an Internet Web site operated for a commercial purpose.

"Dictionary Attacks" Obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

"Harvesting" Obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service operated by another person, where such service/person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service would not give, sell, or otherwise transfer electronic addresses.

"Header Information" The source, destination, and routing information attached to the beginning of an e-mail message, including the originating domain name and originating e-mail address.

"Hijacking" The use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, a commercial e-mail message that is unlawful.

"Initiate" To originate, transmit or to procure the origination or transmission of such message but shall not include actions that constitute routine conveyance. For purposes of the Act, more than one person may be considered to have initiated the same message.

"Primary Purpose" The FTC's regulations provide further clarification regarding determination of whether an e-mail message has "commercial" promotion as its primary purpose. [16 CFR 316.3]

(1) The primary purpose of an e-mail message will be deemed to be commercial if it contains only the commercial advertisement or promotion of a commercial product or service (commercial content);

(2) The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-047: Procedures for Examination Compliance with Controlling the Assault of Non-Solicited Pornography and Marketing Act and Telephone Consumer Protection Act.

2 15 USC 7701 - 7713

3 Final rules relating to the established criteria for determining when the primary purpose of an e-mail message is commercial were published in the Federal Register on January 19, 2005 (70 FR 3110). Final rules relating to governing the labeling of commercial e-mail containing sexually oriented material was published in the Federal Register on April 19, 2004 (69 FR 21024).

and "transactional or relationship" content (*see* below for definition) if either:

- a recipient reasonably interpreting the subject line of the e-mail message would likely conclude that the message contains commercial content; or
- the e-mail message's "transactional or relationship" content does not appear in whole or substantial part at the beginning of the body of the message.

(3) The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content as well as content that is not transactional or relationship content if a recipient reasonably interpreting either:

- the subject line of the e-mail message would likely conclude that the message contains commercial content; or
- the body of the message would likely conclude that the primary purpose of the message is commercial.

(4) The primary purpose of an e-mail message will be deemed to be transactional or relationship (non-commercial) if it contains only "transactional or relationship" content.

"Protected Computer" A computer:

- Exclusively for the use of a financial institution or the United States government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States government and the conduct constituting the offense affects that use by or for the financial institution or the government; or
- Which is used in interstate or foreign commerce or communication.

"Recipient" An authorized user of the electronic mail address to which the message was sent or delivered.

"Sender" A person who initiates an e-mail message and whose product, service, or Internet Web site is advertised or promoted by the message.

"Sexually Oriented Material" Any material that depicts sexually explicit conduct unless the depiction constitutes a small and insignificant part of the whole.

"Transactional or Relationship E-mail Message" An e-mail message with the primary purpose of facilitating, completing or confirming a commercial transaction that the recipient had previously agreed to enter into; to provide warranty, product recall, or safety or security information; or subscription, membership, account, loan, or other information relating to an ongoing purchase or use.

General Requirements of the CAN-SPAM Statute:

- Prohibits the use of false or misleading transmission information [§7704(a)(1)] such as:
  - False or misleading header information;
  - A "from" line that does not accurately identify any person who initiated the message; and
  - Inaccurate or misleading identification of a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.
- Prohibits the use of deceptive subject headings. [§7704(a)(2)]
- Requires a functioning e-mail return address or other Internet-based response mechanism. [§7704(a)(3)]
- Requires that commercial e-mail messages be discontinued within 10 business days after receipt of opt-out notification from recipient. [§7704(a)(4)]
- Requires a clear and conspicuous identification that the message is an advertisement or solicitation; clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender; and a valid physical postal address of the sender. [§7704(a)(5)]
- Prohibits address harvesting (obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service operated by another person, where such service/person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service will not give, sell, or otherwise transfer electronic addresses) and dictionary attacks (obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations). [§7704(b)(1)]
- Prohibits hijacking, the use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, a commercial e-mail message that is unlawful. [§7704(b)(2)]
- Prohibits any person from knowingly relaying or retransmitting a commercial e-mail message that is unlawful. [§7704(b)(3)]
- Requires warning labels (in the subject line and within the message body) on commercial e-mail messages containing sexually oriented material. [§7704(d)]
- Prohibits a person from promoting, or allowing the promotion of, that person's trade or business, or goods, products, property, or services in an unlawful commercial e-mail message. [§7705)(a)]

Examination Objectives:

1. Assess the quality of a financial institution's compliance program for implementing CAN-SPAM by reviewing the appropriate policies and procedures and other internal controls.
2. Determine the reliance that can be placed on a financial institution's audit or compliance review in monitoring the institution's compliance with CAN-SPAM.
3. Determine a financial institution's compliance with CAN-SPAM.
4. Initiate effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

Examination Procedures

Initial Procedures

1. Through discussions with appropriate management officials, determine whether or not management has considered the applicability of CAN-SPAM and what, if any, steps have been taken to ensure current and future compliance.
2. Through discussions with appropriate management officials, ascertain whether the financial institution is subject to CAN-SPAM by determining whether the financial institution initiates e-mail messages whose primary purpose is "commercial."

Stop here if the financial institution does not initiate "commercial" electronic mail. The financial institution is not subject to CAN-SPAM, and no further examination for CAN-SPAM is necessary.

3. Determine, through a review of available information, whether the financial institution's internal controls are adequate to ensure compliance with CAN-SPAM. Consider the following:
   - Organization chart to determine who is responsible for the financial institution's compliance with CAN-SPAM;
   - Process flow charts to determine how the financial institution's CAN-SPAM compliance is planned for, evaluated, and achieved;
   - Policies and procedures;
   - Marketing plans that reflect electronic communication strategies; and
   - Internal checklists, worksheets, and other relevant documents.
4. Review applicable audit and compliance review material, including work papers, checklists, and reports, to determine whether:
   - Procedures address CAN-SPAM provisions applicable to the institution;
   - Effective corrective action occurred in response to previously identified deficiencies;
   - Audits and reviews performed were reasonable and accurate;
   - Deficiencies, their causes, and the effective corrective actions are consistently reported to management or the members of the board of directors; and
   - Frequency of the compliance review is satisfactory.
5. Review a sample of complaints to determine whether or not any potential violations of CAN-SPAM exist.
6. Based on the review of complaints that pertain to aspects of CAN-SPAM, revise the scope of examination focusing on the areas of particular risk. The verification procedures to be employed depend upon the adequacy of the institution's compliance program and level of risk identified.

Verification Procedures

1. Obtain a list of products or services that the financial institution has promoted with e- mail.
2. Obtain a sample of the e-mail messages to determine whether those messages had "commercial" promotion as their primary purpose.
3. Through review of e-mail messages whose primary purpose is "commercial," verify that the messages comply with the CAN-SPAM provisions:
   a. Do not use false or misleading transmission information [§7704(a)(1)] such as:
      - False or misleading header information;
      - A "from" line that does not accurately identify any person who initiated the message; and
      - Inaccurate or misleading identification of a protected computer used to initiate the message.
   b. Do not use deceptive subject headings. [§7704(a)(2)]
   c. Provide a functioning e-mail return address or other Internet-based response mechanism. [§7704(a)(3)]
   d. Provide a clear and conspicuous identification that the message is an advertisement or solicitation; clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender; and a valid physical postal address of the sender. [§7704(a)(5)] Note: this provision does not apply to a commercial e-mail message if the recipient has given prior affirmative consent to receipt of the message.
   e. Do not reflect address harvesting, hijacking, or dictionary attacks. [Section 7704(b)(1, 2)]
   f. Provide a warning label (in the subject and within the message body) on commercial e-mail messages containing sexually oriented material. [Section 7704(d)]

4. Review any customer requests to opt out of receiving any additional e-mail messages from the institution. [Section 7704(a)(4)] Confirm that there are controls in place to discontinue commercial e-mail messages within 10 days of receipt of opt-out notification.

Conclusions

1. Summarize all findings, supervisory concerns, and regulatory violations.
2. For the violation(s), determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors; also, determine whether the violation(s) are repetitive or systemic.
3. Identify action needed to correct violations and weaknesses in the institution's compliance program.
4. Discuss findings with the institution's management and obtain a commitment for corrective action.
5. Record violations according to agency policy to facilitate analysis and reporting.

References

Federal Trade Commission Resources

Consumer Website on SPAM Issues
http://www.ftc.gov/bcp/conline/edcams/spam/index.html

Controlling the Assault of Non-Solicited Pornography and marketing Act of 2003
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ187.108.pdf

Job Aids

CAN-SPAM Examination Worksheet

This worksheet can be used to review audit work papers, to evaluate bank policies, to perform transaction testing, and to train as appropriate. Complete only those aspects of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

Examination Worksheet—CAN-SPAM	Yes	No
1. Does the financial institution initiate e-mail messages where the primary purpose is "commercial?" If No, stop here. If Yes, continue to question #2.		
For the questions below, every "No" answer indicates a potential violation of the regulation and/or an internal control deficiency that must be explained fully in the work papers.		
Prohibition Against Misleading Information		
2. In the sending of commercial e-mail messages, does the financial institution prohibit the following: [15 USC 7704(a)(1)]		
• Use of false or misleading header information in commercial e-mail messages.		
• Use of a "from" line that does not accurately identify the sender.		
• Inaccurate or misleading identification of a protected computer to send commercial e-mail messages in order to disguise the e-mail message's origin.		
3. Does the financial institution prohibit the use of deceptive or misleading headings in the subject line of commercial e-mail messages? [15 USC 7704(a)(2)]		
4. Does the financial institution use a functioning e-mail return address or other response mechanism to which consumers can reply or opt-out of receiving future commercial e-mail messages? [15 USC 7704(a)(3)]		
• Are these mechanisms displayed in a clear and conspicuous manner?		
Opt-Out Provisions		
5. Does the financial institution prohibit future transmissions of commercial e-mail messages within 10 business days of receiving the opt-out request? [15 USC 7704(a)(4)]		
Clear and Conspicuous Identification		
6. Does the financial institution's commercial e-mail message provide the following information clearly and conspicuously: [15 USC 7704(a)(5)]:		
• Identification that the e-mail message is an advertisement or solicitation. *NOTE: This provision does not apply to a commercial e-mail message if the recipient has given prior affirmative consent to receipt of the message.*		
• A notice of the option to decline further commercial e-mail messages from the sender.		
• A valid physical postal address of the sender.		
Transmission of Commercial E-mail Messages		
7. Does the financial institution prohibit the use of address harvesting or dictionary attacks as a means of obtaining consumer e-mail addresses? [15 USC 7704(b)(1)]		
8. Does the financial institution prohibit the automated creation of multiple e-mail accounts or online accounts that falsify e-mail message identification and transmit unlawful commercial e-mail messages? [15 USC 7704(b)(2)]		

Examination Worksheet—CAN-SPAM (continued)	Yes	No
Transmission of Commercial E-mail Messages (continued)		
9. Does the financial institution prevent the transmission of unlawful commercial e-mail messages by persons who access financial institution computers or computer network systems without authorization? [15 USC 7704(b)(3)]		
Sexually Oriented Material		
10. Does the financial institution refrain from transmitting sexually oriented material in commercial e-mail messages without warning labels in the subject line and message body? [15 USC 7704(d)]		

Telephone Consumer Protection Act[1]

Introduction

The Federal Communications Commission (FCC) has issued regulations that establish a national "Do-Not-Call" registry and other modifications to the Telephone Consumer Protection Action of 1991 (TCPA)[2]. The FCC regulations impose financial penalties on all commercial telemarketers for calling phone numbers on the "Do-Not-Call" registry. For those numbers not on the registry, the regulations set a maximum rate on the number of abandoned calls and require telemarketers to transmit caller ID information. The regulations also modify the FCC's unsolicited facsimile advertising requirements, which in turn were modified by the Junk Fax Prevention Act of 2005 and became effective on July 9, 2005. The FCC regulations were, generally, effective as of October 1, 2003.

The FCC regulation expanded coverage of the national "Do-Not-Call"[3] registry by including banks, insurance companies, credit unions, and savings associations. The Federal Trade Commission's (FTC) telemarketing regulations parallel the FCC regulations[4] and apply to all other business entities, including third parties acting as agent or on behalf of a financial institution.

Key Definitions:

"Abandoned Call" A telephone call that is not transferred to a live sales agent within two seconds of the recipient's completed greeting.

"Automatic Telephone Dialing System and Autodialer" Equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and the capability to dial such numbers.

"Established Business Relationship" A prior or existing relationship between a person or entity and a residential subscriber based on the subscriber's purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, and neither party has previously terminated the relationship. An individual may reasonably expect that an affiliate is included in an established business relationship based on products offered or the identity of the affiliate.

"Residential Subscriber" An individual who has contracted with a common carrier to provide telephone exchange service at a personal residence.

"Seller" The person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telemarketer" The person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telemarketing" The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telephone Solicitation" The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. Telephone solicitation does not include a call or message to any person with that person's permission, to any person with whom the caller has an established business relationship, or on behalf of a tax-exempt nonprofit organization.

"Unsolicited Advertisement" Any material that advertises the commercial availability or quality of any property, goods, or services, which is transmitted to any person without that person's prior express invitation or permission.

General Requirements of TCPA

The FCC regulations that implement the Telephone Consumer Protection Act of 1991 provide consumers with options to avoid unwanted telephone solicitations. The regulations address the following:

- The FCC's adoption of a national "Do-Not-Call" registry that expands coverage to entities regulated by the FTC.[5]
- Under the FCC's rules, no seller or entity telemarketing on behalf of the seller can initiate a telephone solicitation to a residential telephone subscriber who has registered his

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-047: Procedures for Examination Compliance with Controlling the Assault of Non-Solicited Pornography and Marketing Act and Telephone Consumer Protection Act.

2 47 USC 227; The Federal Communications Commission final regulations were published in the Federal Register on July 25, 2003 (68 FR 44144).

3 The Federal Trade Commission (FTC) maintains the registry adopted by the FCC.

4 The Federal Trade Commission final regulations were published in the Federal Register on January 29, 2003. (68 FR 4580)

5 By doing so, the FCC asserts its considerably broader jurisdiction over telemarketing than the FTC. Specifically, telemarketing by in-house employees of banks, savings associations, and credit unions, as well as other areas of commerce, are covered by the FCC's authority.

or her telephone number on the national "Do-Not-Call" registry. A safe harbor exists for an inadvertent violation of this requirement if the telemarketer can demonstrate that the violation was an error and that its routine practices include:

1. Written procedures.
2. Training of personnel.
3. Maintenance of a list of telephone numbers excluded from contact.
4. Use of a version of the national "Do-Not Call" registry obtained no more than three months prior to the date any call is made (with records to document compliance).
5. Process to ensure that it does not sell, rent, lease, purchase, or use the do-not-call database in any manner except in compliance with regulations. [47 CFR 64.1200(c)(2)(i)]

- Companies must maintain company-specific do-not-call lists reflecting the names of customers with established business relationships who have requested to be excluded from telemarketing. Such requests must be honored for five years. [47 CFR 64.1200(d)(6)]
- Telemarketing calls can only be made between the hours of 8 a.m. and 9 p.m. (local time at the called party's location). [47 CFR 64.1200(c)(1)]
- All telemarketers must comply with limits on "abandoned calls" and employ other consumer-friendly practices when using automated telephone-dialing equipment. A telemarketer must abandon no more than 3 percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. Two or more telephone lines of a multi-line business are not to be called simultaneously. Telemarketers must disconnect an unanswered telemarketing call prior to at least 15 seconds or four rings. All businesses that use autodialers to sell services must maintain records documenting compliance with call abandonment rules. [47 CFR 64.1200(a)(4, 5 and 6)]
- All prerecorded messages, whether delivered by automated dialing equipment or not, must identify the name of the entity responsible for initiating the call, along with the telephone number of that entity that can be used during normal business hours to ask not to be called again. [47 CFR 64.1200(b)]
- All telemarketers must transmit caller ID information, when available, and must refrain from blocking any such transmission(s) to the consumer. [47 CFR 64.1601(e)][6]
- Unsolicited fax transmissions must be preceded by the advertiser's receipt of the express written permission and signature of the intended recipient, unless there is an "existing business relationship." However, the express permission cannot be conveyed through the use of a "negative option." Businesses that advertise by fax are required to maintain records demonstrating that recipients have provided express permission to send fax advertisements or that there is an existing business relationship. [47 CFR 64.1200(a)(3) and 47 USC 227 as amended by the Junk Fax Prevention Act of 2005
- Tax-exempt nonprofit organizations are not required to comply with the do-not-call provisions of the TCPA. [47 CFR 64.1200(d)(7)]

Examination Objectives:

1. Assess the quality of a financial institution's compliance program for implementing TCPA by reviewing the appropriate policies, procedures, and other internal controls.
2. Determine the reliance that can be placed on a financial institution's audit or compliance review in monitoring the institution's compliance with TCPA.
3. Determine a financial institution's compliance with TCPA.
4. Initiate effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

Examination Procedures

Initial Procedures

1. Through discussions with appropriate management officials, determine whether or not management has considered the applicability of TCPA and what, if any, steps have been taken to ensure current and future compliance.
2. Through discussions with appropriate management officials, ascertain whether the financial institution is subject to TCPA by determining whether it or a third-party telemarketing firm engages in any form of telephone solicitation.

Stop here if the financial institution itself does not engage directly or indirectly through a third-party telemarketing firm, in any form of telephone solicitation via telephone or facsimile machine. The financial institution is not subject to TCPA, and no further examination for TCPA is necessary.

3. Determine, through a review of available information, whether the financial institution's internal controls are adequate to ensure compliance with TCPA. Consider the following:
   - Organization chart to determine who is responsible for the financial institution's compliance with TCPA;

6 The rule sets forth the technical information that must be made available (subject to differing technologies). The FCC stated that Caller ID information should also increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA violators. (68 FR 44166, July 25, 2003)

- Process flow charts to determine how the financial institution's TCPA compliance is planned for, evaluated, and achieved;
- Policies and procedures that address:
  a. Recording a telephone subscriber's request not to receive calls from a particular financial institution and the maintenance of those recordings for five years.
  b. Placement of the telephone subscriber's name, if given, and telephone number on the financial institution's do-not-call list.
  c. Maintenance of the list of telephone numbers that the financial institution may not contact.
  d. Compliance with the national do-not-call rules.
  e. Use of a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
- Training of the financial institution's personnel engaged in telemarketing as to the existence and use of the financial institution's do-not-call list and the national do-not-call rules; [47 CFR 64.1200(d)(2)]
- Process for recording a telephone subscriber's request not to receive calls and to place the subscriber's name, if provided, and telephone number on a do-not-call list; [47 CFR 64.1200(d)(3)]
- Process used to access the national do-not-call database; [47 CFR 64.1200(c)(2)(i)(D)]
- Process to ensure that the financial institution (and any third-party engaged in making telemarketing calls on behalf of the financial institution) does not sell, rent, lease, purchase, or use the national do-not-call database for any purpose except for compliance with the TCPA; [47 CFR 64.1200(c)(2)(i)(E)]
- Process to ensure that telemarketers making telemarketing calls are providing the called party with the name of the individual caller, the name of the financial institution on whose behalf the call is being made, and a telephone number (that is not a 900 number or a long distance number) or address at which the financial institution may be contacted; [47 CRF 64.1200(d)(4)] and
- Internal checklists, worksheets, and other relevant documents.

4. Review applicable audit and compliance review material, including work papers, checklists, and reports, to determine whether:
   - The procedures address the TCPA provisions applicable to the institution;
   - Effective corrective action occurred in response to previously identified deficiencies;
   - The audits and compliance reviews performed were reasonable and accurate;
   - Deficiencies, their causes, and the effective corrective actions are consistently reported to management or the members of the board of directors; and
   - The frequency of the compliance review is satisfactory.
5. Review a sample of complaints to determine whether or not any potential violations of TCPA exist.
6. Based on the review of complaints that pertain to aspects of TCPA, revise the scope of examination focusing on the areas of particular risk. The verification procedures to be employed depend upon the adequacy of the institution's compliance program and level of risk identified.

Verification Procedures

1. Obtain a list of marketing or promotional programs for products and services that the financial institution promoted with telemarketing either directly or through a third-party vendor.
2. Obtain a sample of data, or through testing or managements demonstration, for at least one program, determine whether:

Do-Not-Call List

- The institution or its third-party vendor verified whether the subscriber's telephone number was listed on the national "Do-Not Call" registry. [47 CFR 64.1200(c)(2)]
- If the telephone subscriber is on the national "Do-Not Call" registry and a telemarketing call is made, the existence of an established business relationship between the subscriber and the financial institution can be confirmed [47 CFR 64.1200(f)(3)] or the safe harbor conditions have been met. [47 CFR 64.1200(d)]
- Through testing or management's demonstration, verify that the financial institution has a process to determine whether it has an established business relationship with a telephone subscriber. [47 CFR 64.1200(f)(3)]
- A telephone subscriber's desire to be placed on a company-specific do-not-call list was honored for five years. [47 CFR 64.1200(d)(6)]
- The institution or its third-party vendor employs a version of the national "Do-Not Call" registry or portions of the database for areas called that was obtained no more than three months prior to the call date (three-month process). [47 CFR 64.1200(c)(2)(i)(D)]

- The institution or its third-party vendor maintains records to support the three-month process. [47 CFR 64.1200(c)(2)(i)(D)]
- The telephone call was made between the hours of 8 a.m. and 9 p.m. local time for the called party's location. [47 CFR 64.1200(c)(1)]

Automated Dialing and Abandoned Calls

- Any calls that were made using artificial or prerecorded voice messages to a residential telephone number met the requirements in 47 CFR 64.1200(a)(6)(i).
- The name, telephone number, and purpose of the call were provided to the subscriber if the call was abandoned. [47 CFR 64.1200(a)(6)]
- The institution or its third-party vendor maintains appropriate documentation of abandoned calls, sufficient to determine whether they exceed the 3 percent limit in the 30-day period reviewed. [47 CFR 64.1200(a)(6)]
- The institution or its third-party vendor transmits caller identification information. [47 CFR 64.1601(e)]

3. Ensure that the financial institution does not participate in any purchase-sharing arrangement for access to the national "Do-Not Call" registry. [47 CFR 64.1200(c)(2)(i)(E)]
4. Observe call center operations, if appropriate, to verify abandoned call practices regarding ring duration and two-second transfer rule. [47 CFR 64.1200(a)(6)]

Conclusions

1. Summarize all findings, supervisory concerns, and regulatory violations.
2. For the violation(s), determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors; also, determine whether the violation(s) are repetitive or systemic.
3. Identify action needed to correct violations and weaknesses in the institution's compliance program.
4. Discuss findings with the institution's management, and obtain a commitment for corrective action.
5. Record violations according to agency policy to facilitate analysis and reporting.

References

Federal Trade Commission Resources

Do Not Call Website
http://www.ftc.gov/bcp/conline/edcams/donotcall/index.html

Telephone Disclosure and Dispute Resolution Act of 1992
http://www.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_83.html

Telemarketing and Consumer Fraud and Abuse Prevention Act
http://www.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_87.html

Telecommunication Act of 1996
http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00005714----000-.html

Do-Not-Call Implementation Act
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ010.108.pdf

Do-Not-Call Registry Act of 2003
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ082.108.pdf

Federal Communications Commission Resources

Do Not Call Registry
http://www.fcc.gov/cgb/donotcall/

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-132A1.pdf

FCC Delays Effective Date for Rules Concerning Unsolicited Fax Advertisements
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259689A1.pdf

Job Aids

Telephone Consumer Protection Act Worksheet

This worksheet can be used to review audit work papers, to evaluate bank policies, to perform transaction testing, and to train as appropriate. Complete only those aspects of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

Examination Worksheet—Telephone Consumer Protection Act	Yes	No
1. Does the financial institution or any third party vendor engage in telemarketing activities on the financial institutions behalf? If No, stop here. If Yes, continue to question #2.		
For the questions below, every "No" answer indicates a potential violation of the regulation and/or an internal control deficiency that must be explained fully in the work papers.		
Delivery Restrictions (47 CFR 64.1200))		
2. The financial institution engaged in telemarketing is registered on the FTC's Web site as a seller.		
3. Each financial institution affiliate engaged in telemarketing also is registered on the FTC's Web site and does not rely on the financial institution's registration.		
4. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from initiating any telephone call using an automatic telephone dialing system or an artificial or prerecorded voice to:		
• A paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged. [47 CFR 64.1200(a)(1)]		
• A residential line without the express prior consent of the called party. [47 CFR 64.1200(a)(2)]		
5. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from using a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine without an established business relationship or express written permission from the recipient. [47 USC 227 as amended by the Junk Fax Prevention Act of 2005]		
6. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from using an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously. [47 CFR 64.1200(a)(4)]		
7. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from disconnecting an unanswered telemarketing call prior to at least 15 seconds or four rings. [47 CFR 64.1200(a)(5)]		
8. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from abandoning more than 3 percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. [47 CFR 64.1200(a)(6)]		
9. For an abandoned call, the information provided is limited to the name and telephone number of the business, entity, or individual on whose behalf the call was placed and that the call was made for "telemarketing purposes." [47 CFR 64.1200(a)(6)]		
10. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) refrains from using any technology to dial any telephone number for determining whether the line is a facsimile or voice line. [47 CFR 64.1200(a)(7)]		

Examination Worksheet—Telephone Consumer Protection Act (continued)	Yes	No
Delivery Restrictions (47 CFR 64.1200)) (continued)		
11. If the financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) uses an automatic or prerecorded telephone message, determine whether: [47 CFR 64.1200(b)]		
• At the beginning of the message, the business, individual, or other entity initiating the call is clearly identified.		
• The name of the business responsible for initiating the call is stated.		
• The name of the business responsible for initiating the call is registered with the appropriate regulatory authority.		
• During the message, the telephone number for the business responsible for initiating the call is provided.		
• The number provided is available during regular business hours.		
12. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) initiates all calls to residential subscribers between the hours of 8 a.m. and 9 p.m. (local time of the called party's location). [47 CFR 64.1200(c)(1)]		
13. Prior to initiating any call, the financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) checks the national "Do-Not Call" registry to verify that the residential telephone subscriber's number is not listed. [47 CFR 64.1200(c)(2)]		
14. If the financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) calls a subscriber whose number appears on the "Do-Not Call" registry, does it meet one of the following criteria:		
• It can demonstrate that the violation is the result of an error and that its routine business practices meet the minimum standards set forth in the regulation [47 CFR 64.1200(c)(2)(i)]		
• It has the subscriber's prior express invitation or permission evidenced by a signed, written agreement that includes a telephone number to which the calls may be placed. [47 CFR 64.1200(c)(2)(ii)]		
• It has a personal relationship with the recipient of the call. [47 CFR 64.1200(c)(2)(iii)]		
15. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) has a process to provide the called party with the following information:		
• The name of the individual caller.		
• The name of the person or entity on whose behalf the call is being made.		
• A telephone number or address at which the entity may be contacted. [47 CFR 64.1200(d)(4)]		
16. The financial institution has a process in place that considers whether an established business relationship should extend to an affiliate. [47 CFR 64.1200(f)(ii)]		

Examination Worksheet—Telephone Consumer Protection Act (continued)	Yes	No
Delivery Restrictions (47 CFR 64.1200)) (continued)		
17. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) maintains a do-not-call record listing callers' requests not to receive further telemarketing calls. [47 CFR 64.1200(d)(6)]		
18. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) honors a caller's request not to receive telemarketing calls for five years from the time the request is made. [47 CFR 64.1200(d)(6)]		
19. The financial institution (or third-party engaged in making telemarketing calls on the financial institution's behalf) transmits caller identification information. [47 CFR 64.1601(e)]		

(This page intentionally left blank.)

Fair Credit Reporting Act[1]

Introduction

The Fair Credit Reporting Act (FCRA) (15 USC §§1681-1681u) became effective on April 25, 1971. The FCRA is a part of a group of acts contained in the Federal Consumer Credit Protection Act (15 USC §1601 et seq.), such as the Truth in Lending Act and the Fair Debt Collection Practices Act. Congress subsequently passed the Consumer Credit Reporting Reform Act of 1996 (Pub. L. No. 104-208, 110 Stat. 3009-426), which substantially revised the FCRA. These revisions generally became effective on September 30, 1997. Minor amendments to the FCRA were made in 1997 and 1998. The Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)) made additional changes, including provisions removing a previous statutory prohibition against conducting routine FCRA examinations, and permitting regulations to be adopted to implement the requirements of the FCRA.

The FCRA was substantively amended in 2003 upon the passage of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Pub. L. No. 108-159, 117 Stat. 1952). The FACT Act created many new responsibilities for consumer reporting agencies and users of consumer reports. It contained many new consumer disclosure requirements as well as provisions to address identity theft. In addition, it provided free annual consumer report rights for consumers and improved access to consumer report information to help increase the accuracy of data in the consumer reporting system.

The FCRA contains significant responsibilities for business entities that are consumer reporting agencies and lesser responsibilities for those that are not. Generally, financial institutions are not considered to function as consumer reporting agencies; however, depending on the degree to which their information sharing business practices approximate those of a consumer reporting agency, they can be deemed as such.

In addition to the requirements related to financial institutions acting as consumer reporting agencies, FCRA requirements also apply to financial institutions that operate in the following capacities:

1. Procurers and users of information (for example, as credit grantors, purchasers of dealer paper, or when opening deposit accounts);
2. Furnishers and transmitters of information (by reporting information to consumer reporting agencies or other third parties, or to affiliates);
3. Marketers of credit or insurance products; or
4. Employers.

Structure and Overview of Examination Modules

The examination procedures are structured as a series of modules, grouping similar requirements together. General information about each of the requirements is followed by the examination steps.

Financial institutions are subject to a number of different requirements under the FCRA, of which some are contained directly in the statute, while others are in regulations issued jointly by the FFIEC agencies, while others still are contained in regulations issued by the Federal Reserve Board and/or the Federal Trade Commission. **Job Aids** at the end of this section contains a matrix of the different statutory and regulatory cites applicable to financial institutions that are not consumer reporting agencies. This matrix is sorted by federal regulator.

Key Definitions

There are a number of definitions used throughout the FCRA. Key definitions include the following:

"Consumer" is defined as an individual.

"Consumer report" is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected, in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for:

1. Credit or insurance to be used primarily for personal, family, or household purposes;
2. Employment purposes; or
3. Any other purpose authorized under section 604 (15 USC §1681b).

The term "consumer report" does *not* include:

1. Any report containing information solely about transactions or experiences between the consumer and the institution making the report;
2. Any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different banks that are members of the same holding company, or subsidiary companies of a bank);

1 This section fully incorporates the examination procedures issued under DSC RD Memo 06-005: Revised Interagency Examination Procedures for the Fair Credit Reporting Act *and* DSC RD Memo 06-011: Fair Credit Reporting Act-Medical Information Regulation Examination Procedures.

3. Communication of other information among persons related by common ownership or affiliated by corporate control if:
   a. It is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and
   b. The consumer is given the opportunity, before the time that the information is communicated, to direct that the information not be communicated among such persons;
4. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
5. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, such as a lender who has received a request from a broker, conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 (15 USC §1681m); or
6. A communication described in subsection (o) or (x) of section 603 [15 USC §1681a(o)] (which relates to certain investigative reports and certain reports to prospective employers).

"Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

"Investigative Consumer Report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

"Adverse Action" has the same meaning as used in section 701(d)(6) [15 USC1691(d)(6)] of the Equal Credit Opportunity Act ("ECOA"). Under the ECOA, it means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the same amount or on terms substantially similar to those requested. Under the ECOA, the term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

The term has the following additional meanings for purposes of the FCRA:

1. A denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
2. A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
3. A denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [15 USC §1681b(a)(3)(D)]; and
4. An action taken or determination that is (a) made in connection with an application made by, or transaction initiated by, any consumer, or in connection with a review of an account to determine whether the consumer continues to meet the terms of the account, and (b) adverse to the interests of the consumer.

"Employment Purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

"Consumer Reporting Agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Examination Objectives

1. To determine the financial institution's compliance with the FCRA.
2. To assess the quality of the financial institution's compliance management systems and its policies and procedures for implementing the FCRA.
3. To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the institution's compliance with the FCRA.
4. To direct corrective action when violations of law are identified or when policies or internal controls are deficient.

Examination Procedures

Initial Procedures

The initial procedures are designed to acquaint examiners with the individual operations and processes of the institution under examination. These initial steps focus on an institution's systems, controls, policies, and procedures, including audits and previous examination findings.

The applicability of the various sections of the FCRA and implementing regulations depend on an institution's unique operations. The functional examination requirements for these responsibilities are presented topically in Modules 1 through 6 of these procedures. (Module 6 will be included in a subsequent amendment to these procedures.)

The FCRA contains many different requirements that a financial institution must follow, even if it is not a consumer reporting agency. Subsequent to the passage of the FACT Act, some of the individual compliance responsibilities are set forth directly in the statute, while others are within joint, inter-agency regulations, while still others are set forth in regulations set by some of the regulatory agencies. The modules present examination responsibilities by subject matter, versus strict regulatory or statutory construction.

Initially, examiners should:

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance in the area under review. Consider the following:
   a. Organization charts
   b. Process flowcharts
   c. Policies and procedures
   d. Loan documentation
   e. Checklists
   f. Computer program documentation (for example, records illustrating the fields and types of data reported to consumer reporting agencies; automated records tracking customer opt outs for FCRA affiliate information sharing; etc.)
2. Review any compliance audit material including work papers and reports to determine whether:
   a. The scope of the audit addresses all provisions as applicable;
   b. Corrective actions were taken to follow-up on previously identified deficiencies;
   c. The testing includes samples covering all product types and decision centers;
   d. The work performed is accurate;
   e. Significant deficiencies and their causes are included in reports to management and/or to the board of directors; and
   f. The frequency of review is appropriate.
3. Review the financial institution's training materials to determine whether:
   a. Appropriate training is provided to individuals responsible for FCRA compliance and operational procedures; and
   b. The training is comprehensive and covers the various aspects of the FCRA that apply to the individual financial institution's operations.
4. Through discussions with management, determine which portions of the six examination modules will apply.
5. Complete appropriate examination modules, document and form conclusions regarding the quality of the financial institution's compliance management systems and compliance with the FCRA.

(This page intentionally left blank.)

Module 1: Obtaining Consumer Reports

Overview

Consumer reporting agencies have a significant amount of personal information about consumers. This information is invaluable in assessing a consumer's creditworthiness for a variety of products and services, including loan and deposit accounts, insurance, and utility services, among others. Access to this information is governed by the Fair Credit Reporting Act (FCRA) to ensure that it is obtained for permissible purposes and not exploited for illegitimate purposes.

The FCRA requires any prospective "user" of a consumer report, for example a lender, insurer, landlord, or employer, among others, to have a legally permissible purpose to obtain a report.

Section 604 Permissible Purposes of Consumer Reports and Section 606 Investigative Consumer Reports

Legally Permissible Purposes. The FCRA allows a consumer reporting agency to furnish a consumer report for the following circumstances and no other:

1. In response to a court order or Federal Grand Jury subpoena.
2. In accordance with the written instructions of the consumer.
3. To a person, including a financial institution, which it has reason to believe:
   a. Intends to use the report in connection with a credit transaction involving the consumer (includes extending, reviewing, and collecting credit);
   b. Intends to use the information for employment purposes;[2]
   c. Intends to use the information in connection with the underwriting of insurance involving the consumer;
   d. Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality that is required by law to consider an applicant's financial responsibility;
   e. Intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
   f. Otherwise has a legitimate business need for the information:
      i. In connection with a business transaction that is initiated by the consumer; or
      ii. To review an account to determine whether the consumer continues to meet the terms of the account.
4. In response to a request by the head of a State or local child support enforcement agency (or authorized appointee) if the person certifies various information to the consumer reporting agency regarding the need to obtain the report. (Generally, this particular purpose does not impact a financial institution that is not a consumer reporting agency.)

Prescreened Consumer Reports. Users of consumer reports, such as financial institutions, may obtain prescreened consumer reports to make firm offers of credit or insurance to consumers, unless the consumers have elected to opt out of being included on prescreened lists. The FCRA contains many requirements, including an opt out notice requirement when prescreened consumer reports are used. In addition to defining prescreened consumer reports, Module 3 covers these requirements.

Investigative Consumer Reports. Section 606 contains specific requirements for use of an investigative consumer report. This type of consumer report contains information about a consumer's character, general reputation, personal characteristics, or mode of living that is obtained in whole or in part through personal interviews with neighbors, friends, or associates of the consumer. If a financial institution procures an investigative consumer report, or causes one to be prepared, the institution must meet the following requirements:

1. The institution clearly and accurately discloses to the consumer that an investigative consumer report may be obtained.
2. The disclosure contains a statement of the consumer's right to request other information about the report, and a summary of the consumer's rights under the FCRA.
3. The disclosure is in writing and is mailed or otherwise delivered to the consumer not later than three business days after the date on which the report was first requested.
4. The financial institution procuring the report certifies to the consumer reporting agency that it has complied with the disclosure requirements and will comply in the event that the consumer requests additional disclosures about the report.

Institution Procedures. Given the preponderance of electronically available information and the growth of identity theft, financial institutions should manage the risks associated with obtaining and using consumer reports. Financial institutions should employ procedures, controls, or other safeguards to ensure that consumer reports are obtained

2 Use of consumer reports for employment purposes requires specific advanced authorization, disclosure, and adverse action notices. These issues are contained in Module 3 of the examination procedures.

and used only in situations for which there are permissible purposes. Access to, and storage and destruction of this information is dealt with under an institution's Information Security Program; however, obtaining consumer reports initially must be done in compliance with the FCRA.

Examination Procedures

Section 604 Permissible Purposes of Consumer Reports and Section 606 Investigative Consumer Reports

1. Determine whether the financial institution obtains consumer reports.
2. Determine whether the institution obtains prescreened consumer reports and/or reports for employment purposes. If so, complete the appropriate sections of Module 3.
3. Determine whether the financial institution procures or causes to be prepared an investigative consumer report. If so, ensure that the appropriate disclosure is given to the consumer within the required time periods. In addition, ensure that the financial institution certified compliance with the disclosure requirements to the consumer reporting agency.
4. Evaluate the institution's procedures to ensure that consumer reports are obtained only for permissible purposes. Confirm that the institution certifies to the consumer reporting agency the purposes for which it will obtain reports. (The certification is usually contained in a financial institution's contract with the consumer reporting agency.)
5. If procedural weaknesses are noted or other risks requiring further investigation are noted, such as the receipt of several consumer complaints were received, review a sample of consumer reports obtained from a consumer reporting agency and determine whether the financial institution had permissible purposes to obtain the reports.
   - For example, obtain a copy of a billing statement or other list of consumer reports obtained by the financial institution from the consumer reporting agency for a period of time.
   - Compare this list, or a sample from this list to the institution's records to ensure that there is a permissible purpose for the report(s) obtained. This could include any permissible purpose, such as the consumer applied for credit, insurance, or employment, etc. The financial institution may also obtain a report in connection with the review of an existing account.

Module 2: Obtaining Information and Sharing Among Affiliates

Overview

The Fair Credit Reporting Act (FCRA) contains many substantive compliance requirements for consumer reporting agencies that are designed to help ensure the accuracy and integrity of the consumer reporting system. As noted in the definitions section, a consumer reporting agency is a person that generally furnishes consumer reports to third parties. By their very nature, banks, credit unions, and thrifts have a significant amount of consumer information that could constitute a consumer report, and thus communication of this information could cause the institution to become a consumer reporting agency. The FCRA contains several exceptions that enable a financial institution to communicate this type of information, within strict guidelines, without becoming a consumer reporting agency.

Rather than containing strict information sharing prohibitions, the FCRA creates a business disincentive such that if a financial institution shares consumer report information outside of the exceptions, then the institution is a consumer reporting agency and will be subject to the significant, substantive requirements of the FCRA applicable to those entities. Typically, a financial institution will structure its information sharing practices within the exceptions to avoid becoming a consumer reporting agency. This examination module generally covers the various information sharing practices within these exceptions.

If upon completion of this module, examiners determine that the financial institution's information sharing practices fall outside of these exceptions, the financial institution will be considered a consumer reporting agency and Module 6 of the examination procedures should be completed.

Section 603(d) Consumer Report and Information Sharing

Section 603(d) defines a consumer report to include information about a consumer such as that which bears on a consumer's creditworthiness, character, and capacity among other factors. Communication of this information may cause a person, including a financial institution, to become a consumer reporting agency. The statutory definition contains key exemptions to this definition that enable financial institutions to share this type of information under certain circumstances, without becoming consumer reporting agencies. Specifically, the term "consumer report" does not include:

1. A report containing information solely as to transactions or experiences between the consumer and the financial institution making the report. A person, including a financial institution, may share information strictly related to its own transactions or experiences with a consumer (such as the consumer's payment history, or an account with the institution) with any third party, without regard to affiliation, without becoming a consumer reporting agency. This type of information sharing may, however, be restricted under the Privacy of Consumer Financial Information regulations that implement the Gramm-Leach-Bliley Act (GLBA) because it meets the definition of non-public personal information under the Privacy regulations; therefore sharing it with non-affiliated third parties may be subject to an opt out under the privacy regulations. In turn, the FCRA may also restrict activities that the GLBA permits. For example, the GLBA permits a financial institution to share a list of its customers and information such as their credit scores with another financial institution to jointly market or sponsor other financial products or services. This communication may be considered a consumer report under the FCRA and could potentially cause the sharing financial institution to become a consumer reporting agency.
2. Communication of such transaction or experience information among persons, including financial institutions related by common ownership or affiliated by corporate control.
3. Communication of other information (e.g., other than transaction or experience information) among persons and financial institutions related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information will be communicated among such entities, and before the information is initially communicated, the consumer is given the opportunity to opt out of the communication. This allows a financial institution to share other information (that is, information other than its own transaction and experience information) that could otherwise be a consumer report, without becoming a consumer reporting agency under the following circumstances:
   a. The sharing of the "other" information is done with affiliates; and
   b. Consumers are provided with the notice and an opportunity to opt out of this sharing before the information is first communicated among affiliates.

For example, "other" information can include information provided by a consumer on an application form concerning accounts with other financial institutions. It can also include information obtained by a financial institution from a consumer reporting agency, such as the consumer's credit score. If a financial institution shares other information with affiliates without providing a notice and an opportunity to opt out, the financial institution may become a consumer reporting agency subject to all of the other requirements of the FCRA.

The opt out right required by this section must be contained in a financial institution's Privacy Notice, as required by the GLBA and its implementing regulations.

Other Exceptions

Specific extensions of credit. In addition, the term "consumer report" does not include the communication of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device. For example, this exception allows a lender to communicate an authorization through the credit card network to a retailer, to enable a consumer to complete a purchase using a credit card.

Credit Decision to Third Party (e.g., auto dealer). The term "consumer report" also does not include any report in which a person, including a financial institution, who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, conveys the decision with respect to the request. The third party must advise the consumer of the name and address of the financial institution to which the request was made, and such financial institution makes the adverse action disclosures required by section 615 of the FCRA. For example, this exception allows a lender to communicate a credit decision to an automobile dealer who is arranging financing for a consumer purchasing an automobile and who requires a loan to finance the transaction.

Joint User Rule. The Federal Trade Commission staff commentary discusses another exception known as the "Joint User Rule." Under this exception, users of consumer reports, including financial institutions, may share information if they are jointly involved in the decision to approve a consumer's request for a product or service, provided that each has a permissible purpose to obtain a consumer report on the individual. For example, a consumer applies for a mortgage loan that will have a high loan-to-value ratio, and thus the lender will require private mortgage insurance (PMI) in order to approve the application. The PMI will be provided by an outside company. The lender and the PMI company can share consumer report information about the consumer because both entities have permissible purposes to obtain the information and both are jointly involved in the decision to grant the products to the consumer. This exception applies to entities that are affiliated or non-affiliated third parties. It is important to note that the GLBA will still apply to the sharing of non-public, personal information with non-affiliated third parties; therefore, financial institutions should be aware that sharing under the FCRA joint user rule may still be limited or prohibited by the GLBA.

Examination Procedures

Section 603(d) Consumer Report and Information Sharing

1. Review the financial institution's policies, procedures, and practices concerning the sharing of consumer information with third parties, including both affiliated and non-affiliated third parties. Determine the type of information shared and with whom the information is shared. (This portion of the examination process may overlap with a review of the institution's compliance with the Privacy of Consumer Financial Information Regulations that implement the Gramm-Leach-Bliley Act.)
2. Determine whether the financial institution's information sharing practices fall within the exceptions to the definition of a consumer report. If they do not, the financial institution could be considered a consumer reporting agency, in which case Module 6 of the examination procedures should be completed.
3. If the financial institution shares information other than transaction and experience information with affiliates subject to an opt out, ensure that information regarding how to opt out is contained in the institution's GLBA Privacy Notice, as required by the Privacy of Consumer Financial Information regulations.
4. If procedural weaknesses are noted or other risks requiring further investigation are noted, obtain a sample of opt out rights exercised by consumers and determine if the financial institution honored the opt out requests by not sharing "other information" about the consumers with the institution's affiliates subsequent to receiving a consumer's opt out direction.

Section 604(g) Protection of Medical Information

Section 604(g) generally prohibits creditors from obtaining and using medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The statute contains no prohibition on creditors obtaining or using medical information for other purposes that are not in connection with a determination of the consumer's eligibility, or continued eligibility for credit.

Section 604(g)(5)(A) requires the FFIEC agencies to prescribe regulations that permit transactions that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. On November 22, 2005, the FFIEC Agencies published final rules in the Federal Register (70 FR 70664). The rules contain the general prohibition on obtaining or using medical information, and provide exceptions for the limited circumstances when medical information may be used. The rules define "credit" and "creditor" as having the same

meanings as in section 702 of the Equal Credit Opportunity Act (15 USC 1691a).

Obtaining and Using Unsolicited Medical Information. A creditor does not violate the prohibition on obtaining medical information if it receives the medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information. However, the creditor may only use this medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit in accordance with either the financial information exception or one of the specific other exceptions provided in the rules. These exceptions are discussed below.

Financial Information Exception. The rules allow a creditor to obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility or continued eligibility for credit, so long as:

1. The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the loan proceeds;
2. The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; AND
3. The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

The financial information exception is designed in part to allow creditors to consider a consumer's medical debts and expenses in the assessment of that consumer's ability to repay the loan according to the loan terms. In addition, the financial information exception also allows a creditor to consider the dollar amount and continued eligibility for disability income, worker's compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment.

The creditor may use the medical information in a manner and to an extent that is *no less favorable* than it would use comparable, non-medical information. For example, a consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other is to a retailer. The creditor may use and consider the debt to the hospital in the same manner in which they consider the debt to the retailer, such as including the debts in the calculation of the consumer's proposed debt-to-income ratio. In addition, the consumer's payment history of the debt to the hospital may be considered in the same manner as the debt to the retailer. For example, if the creditor does not grant loans to applicants who have debts that are 90-days past due, the creditor could consider the past-due status of a debt to the hospital, in the same manner as the past-due status of a debt to the retailer.

A creditor may use medical information in a manner that is more favorable to the consumer, according to its regular policies and procedures. For example, if a creditor has a routine policy of declining consumers who have a 90-day past due installment loan to a retailer, but does not decline consumers who have a 90-day past due debt to a hospital, the financial information exception would allow a creditor to continue this policy without violating the rules because in these cases, the creditor's treatment of the debt to the hospital is more favorable to the consumer.

A creditor may not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any determination regarding the consumer's eligibility, or continued eligibility for credit. The creditor may only consider the financial implications as discussed above, such as the status of a debt to a hospital, continuance of disability income, etc.

Specific Exceptions for Obtaining and Using Medical Information. In addition to the financial information exception, the rules also provide for the following nine specific exceptions under which a creditor can obtain and use medical information in its determination of the consumer's eligibility, or continued eligibility for credit:

1. To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate, or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as a legal representative for a consumer based on an asserted medical condition or event. For example, if Person A is attempting to act on behalf of Person B under a Power of Attorney that is invoked based on a medical event, a creditor is allowed to obtain and use medical information to verify that Person B has experienced a medical condition or event such that Person A is allowed to act under the Power of Attorney.
2. To comply with applicable requirements of local, state, or Federal laws.
3. To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit related assistance program that is:
   a. Designed to meet the special needs of consumers with medical conditions; AND
   b. Established and administered pursuant to a written plan that:

   i. Identifies the class of persons that the program is designed to benefit; and
   ii. Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program.
4. To the extent necessary for purposes of fraud prevention or detection.
5. In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of the loan and the use of the proceeds.
6. Consistent with safe and sound banking practices, if the consumer or the consumer's legal representative requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor. For example, at the consumer's request, a creditor may grant an exception to its ordinary policy to accommodate a medical condition that the consumer has experienced. This exception allows a creditor to consider medical information in this context, but it does not require a creditor to make such an accommodation nor does it require a creditor to grant a loan that is unsafe or unsound.
7. Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer. For example, if a creditor has a policy of delaying foreclosure in cases where a consumer is experiencing a medical hardship, this exception allows the creditor to use medical information to determine if the policy would apply to the consumer. Like the exception listed in item 6 above, this exception does not require a creditor to grant forbearance, it merely provides an exception so that a creditor may consider medical information in these instances.
8. To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement.
9. To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

Limits on redisclosure of information. If a creditor subject to the medical information rules receives medical information about a consumer from a consumer reporting agency or its affiliate, the creditor must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

Sharing medical information with affiliates. In general, the exclusions from the definition of "consumer report" in section 603(d)(2) of the FCRA allow the sharing of information among affiliates. With regard to medical information, section 603(d)(3) of the FCRA provides that the exclusions in section 603(d)(2) do not apply when a person subject to the medical information rules shares the following information with an affiliate:

1. Medical information;
2. An individualized list or description based on the payment transactions of the consumer for medical products or services; or
3. An aggregate list of identified consumers based on payment transactions for medical products or services.

If a person who is subject to the medical rules shares with an affiliate the type of information discussed above, the exclusions from the definition of "consumer report" do not apply. Effectively, this means that if a person shares medical information, that person becomes a consumer reporting agency, subject to all of the other substantive requirements of the FCRA.

The rules provide exceptions to these limitations on sharing medical information with affiliates. A person, such as a bank, thrift, or credit union, may share medical information with its affiliates without becoming a consumer reporting agency under the following circumstances:

1. In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);
2. For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. For any purpose referred to in section 1179 of HIPAA;
4. For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;
5. In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with the financial information exceptions or specific exceptions; or
6. As otherwise permitted by order of an FFIEC agency.

Examination Procedures

1. Review the financial institution's policies, procedures, and practices concerning the collection and use of medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility for credit.
2. If the financial institution's policies, procedures, and practices allow for obtaining and using medical information pertaining to a consumer in the context of a credit transaction, assess whether there are adequate controls in place to ensure that the information is only used subject to the financial information exception in the rules, or under a specific exception within the rules.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, obtain samples of credit transactions to determine if the use of medical information pertaining to a consumer was done strictly under the financial information exception or the specific exceptions under the regulation.
4. Determine whether the financial institution has adequate policies and procedures in place to limit the redisclosure of medical information about a consumer that was received from a consumer reporting agency or an affiliate.
5. Determine whether the financial institution shares medical information about a consumer with affiliates. If information is shared, determine whether it occurred under an exception in the rules that enables the financial institution to share the information without becoming a consumer reporting agency.

Section 624 Affiliate Marketing Opt Out

Section 624 of the FCRA requires consumers to be provided with a notice and an opportunity to opt out of an entity's use of certain information received from an affiliate to make solicitations to the consumer. The federal banking agencies, the National Credit Union Administration, the Federal Trade Commission, and the Securities and Exchange Commission are in the process of developing final regulations to implement this new opt out requirement. Financial institutions will not be subject to these requirements until the final rules are implemented and effective. This section of the examination procedures will be written upon publication of the final regulations.

(This page intentionally left blank.)

Module 3: Disclosures to Consumers and Miscellaneous Requirements

Overview

The Fair Credit Reporting Act (FCRA) requires financial institutions to provide consumers with various notices and information under a variety of circumstances. This module contains examination responsibilities for these various areas.

Section 604(b) Use of Consumer Reports for Employment Purposes

Section 604(b) has specific requirements for financial institutions that obtain consumer reports of its employees or prospective employees prior to, and/or during, the term of employment. The FCRA generally requires the written permission of the consumer to procure a consumer report for "employment purposes." Moreover, a clear and conspicuous disclosure that a consumer report may be obtained for employment purposes must be provided in writing to the consumer prior to procuring a report.

Prior to taking any adverse action involving employment that is based in whole or in part on the consumer report, the user generally must provide to the consumer:

1. A copy of the report; and
2. A description in writing of the rights of the consumer under this title, as prescribed by the FTC under section (609)(c)(3).

At the time a financial institution takes adverse action in an employment situation, the consumer must also be provided with an adverse action notice, required by section 615, described later in this module.

Examination Procedures

1. Determine whether the financial institution obtains consumer reports on current or prospective employees.
2. Assess the financial institution's policies and procedures to ensure that appropriate disclosures are provided to current and prospective employees when consumer reports are obtained for employment purposes, including situations where adverse actions are taken based on consumer report information.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of the disclosures to determine if they are accurate and in compliance with the technical FCRA requirements.

Sections 604(c) and 615(d) of FCRA - Prescreened Consumer Reports and Opt out Notice [and Parts 642 and 698 of Federal Trade Commission Regulations]

Section 604(c)(1)(B) allows persons, including financial institutions, to obtain and use consumer reports on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, to make firm offers of credit or insurance. This process, known as prescreening, occurs when a financial institution obtains a list from a consumer reporting agency of consumers who meet certain predetermined creditworthiness criteria and who have not elected to be excluded from such lists. These lists may only contain the following information:

1. The name and address of a consumer;
2. An identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
3. Other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

Each name appearing on the list is considered an individual consumer report. In order to obtain and use these lists, financial institutions must make a "firm offer of credit or insurance" as defined in section 603(l) to each person on the list. An institution is not required to grant credit or insurance if the consumer is not creditworthy or insurable, or cannot furnish required collateral, provided that the underwriting criteria are determined in advance, and applied consistently.

> *Example 1:* Assume a home mortgage lender obtains a list from a consumer reporting agency of everyone in County X, with a current home mortgage loan and a credit score of 700. The lender will use this list to market a 2nd lien home equity loan product. The lender's other non-consumer report criteria, in addition to those used in the prescreened list for this product, include a maximum total debt-to-income ratio (DTI) of 50% or less. Some of the criteria can be screened by the consumer reporting agency, but others, such as the DTI, must be determined individually when consumers respond to the offer. If a consumer responds to the offer, but already has a DTI of 60%, the lender does not have to grant the loan.

In addition, the financial institution is allowed to obtain a full consumer report on anyone responding to the offer to verify that the consumer continues to meet the creditworthiness criteria. If the consumer no longer meets those criteria, the financial institution does not have to grant the loan.

> *Example 2:* On January 1, a credit card lender obtains a list from a consumer reporting agency of consumers in County Y who have credit scores of 720, and no previous bankruptcy records. The lender mails solicitations offering a pre-approved credit card to everyone on the list on January 2. On January 31, a consumer responds to the offer and the lender obtains and reviews a full consumer report which shows that a bankruptcy record was added

on January 15. Since this consumer no longer meets the lender's predetermined criteria, the lender is not required to issue the credit card.

These basic requirements help prevent financial institutions from obtaining prescreened lists without following through with an offer of credit or insurance. The financial institution must maintain the criteria used for the product (including the criteria used to generate the prescreened report and any other criteria such as collateral requirements) on file for a period of three years, beginning on the date that the offer was made to the consumer.

Technical Notice and Opt Out Requirements. Section 615(d) contains consumer protections and technical notice requirements concerning prescreened offers of credit or insurance. The FCRA requires nationwide consumer reporting agencies to jointly operate an "opt out" system, whereby consumers can elect to be excluded from prescreened lists by calling a toll-free number.

When a financial institution obtains and uses these lists, they must provide consumers with a Prescreened Opt Out Notice with the offer of credit or insurance. This notice alerts consumers that they are receiving the offer because they meet certain creditworthiness criteria. The notice must also provide the toll-free telephone number operated by the nationwide consumer reporting agencies for consumers to call to opt out of prescreened lists.

The FCRA contains the basic requirement to provide notices to consumers at the time the prescreened offers are made. The Federal Trade Commission published an implementing regulation containing the technical requirements of the notice at 16 CFR Parts 642 and 698. This regulation is applicable to anyone, including banks, credit unions, and thrifts that obtain and use prescreened consumer reports. These requirements became effective on August 1, 2005; however, the requirement to provide a notice containing the toll-free opt out telephone number has existed under the FCRA for many years.

Requirements Beginning August 1, 2005. 16 CFR 642 and 698 of the FTC regulations require a "short" notice and a "long" notice of the prescreened opt out information be given with each written solicitation made to consumers using prescreened consumer reports. These regulations also contain specific requirements concerning the content and appearance of these notices. The requirements are listed within the following paragraphs of these procedures. The regulations were published on January 31, 2005, in 70 Federal Register 5022.

The short notice must be a clear and conspicuous, simple, and easy-to-understand statement as follows:

1. **Content.** The short notice must state that the consumer has the right to opt out of receiving prescreened solicitations, provide the toll-free number, and direct consumers to the existence and location of the long notice, and shall state the title of the long notice. The short notice may not contain any other information.
2. **Form.** The short notice must be in a type size larger than the principal text on the same page, but it may not be smaller than 12 point type. If the notice is provided by electronic means, it must be larger than the type size of the principal text on the same page.
3. **Location.** The short form must be on the front side of the first page of the principal promotional document in the solicitation, or if provided electronically, it must be on the same page and in close proximity to the principal marketing message. The statement must be located so that it is distinct from other information, such as inside a border, and must be in a distinct type style, such as bolded, italicized, underlined, and/or in a color that contrasts with the principal text on the page, if the solicitation is provided in more than one color.

The long notice must also be a clear and conspicuous, simple, and easy to understand statement as follows:

1. **Content.** The long notice must state the information required by section 615(d) of the FCRA and may not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.
2. **Form.** The notice must appear in the solicitation, be in a type size that is no smaller than the type size of the principal text on the same page, and, for solicitations provided other than by electronic means, the type size may not be smaller than 8-point type. The notice must begin with a heading in capital letters and underlined, and identifying the long notice as the "PRESCREEN & OPT OUT NOTICE." It must be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts from the principal text, if the solicitation is in more than one color. The notice must be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

The FTC developed model Prescreened Opt Out Notices, which are contained in Appendix A to 16 CFR 698 of the FTC's regulations. Appendix A contains complete sample solicitations for context. The prescreen notice text is contained in the following:

Sample Short Notice:

> You can choose to stop receiving "prescreened" offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. *See* PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

Sample Long Notice:

> PRESCREEN & OPT-OUT NOTICE: This "prescreened" offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].

Examination Procedures

1. Determine whether the financial institution obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
2. Evaluate the institution's policies and procedures to ensure that criteria used for prescreened offers, including all post-application criteria, are maintained in the institution's files and used consistently when consumers respond to the offers.
3. Determine whether written solicitations contain the required disclosures of the consumers' right to opt out of prescreened solicitations and comply with all requirements applicable at the time of the offer.
4. If procedural weaknesses are noted or other risks requiring further investigation are noted, obtain and review a sample of approved and denied responses to the offers to ensure that criteria were appropriately followed.

Section 605(g) Truncation of Credit and Debit Card Account Numbers

Section 605(g) provides that persons, including financial institutions that accept debit and credit cards for the transaction of business will be prohibited from issuing electronic receipts that contain more than the last five digits of the card number, or the card expiration dates, at the point of sale or transaction. This requirement applies only to electronically developed receipts and does not apply to hand-written receipts or those developed with an imprint of the card. For Automatic Teller Machines (ATMs) and Point-of-Sale (POS) terminals or other machines that were put into operation before January 1, 2005, this requirement is effective on December 4, 2006. For ATMs and POS terminals or other machines that were put into operation on or after January 1, 2005, the effective date is the date of installation.

Examination Procedures

1. Determine whether the financial institution's policies and procedures ensure that electronically generated receipts from ATM and POS terminals or other machines do not contain more than the last five digits of the card number and do not contain the expiration dates.
2. For ATMs and POS terminals or other machines that were put into operation before January 1, 2005, determine if the institution has brought the terminals into compliance or has begun a plan to ensure that these terminals comply by the mandatory compliance date of December 4, 2006.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review samples of actual receipts to ensure compliance.

Section 609(g) Disclosure of Credit Scores by Certain Mortgage Lenders

Section 609(g) requires financial institutions that make or arrange mortgage loans using credit scores to provide the score with accompanying information to the applicants.

Credit score. For purposes of this section, the term "credit score" is defined as a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score"). The credit score does not include:

(a) any mortgage score or rating by an automated underwriting system that considers one or more factors in addition to credit information, such as the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer; or

(b) any other elements of the underwriting process or underwriting decision.

Covered transactions. The disclosure requirement applies to both closed-end and open-end loans that are for consumer purposes and are secured by 1-to-4 family residential real properties, including purchase and refinance transactions. This requirement will not apply in circumstances that do not involve a consumer purpose, such as when a borrower obtains a loan secured by his or her residence to finance his or her small business.

Specific required notice. Financial institutions in covered transactions that use credit scores must provide a disclosure containing the following specific language, which is contained in section 609(g)(1)(D):

> **Notice to The Home Loan Applicant**
>
> In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.
>
> The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.
>
> Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.
>
> If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.
>
> If you have questions concerning the terms of the loan, contact the lender.

The notice must include the name, address, and telephone number of each consumer reporting agency that provided a credit score that was used.

Credit score and key factors disclosed. In addition to the notice, financial institutions must also disclose the credit score, the range of possible scores, the date that the score was created, and the "key factors" used in the score calculation. "Key factors" are defined as all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score. The total number of factors to be disclosed shall not exceed four factors. However, if one of the key factors is the number of inquiries into a consumer's credit information, then the total number of factors shall not exceed five. These key factors come from information supplied by the consumer reporting agencies with any consumer report that was furnished containing a credit score. (Section 605(d)(2)).

This disclosure requirement applies in any application for a covered transaction, regardless of the final action taken by the lender on the application. The FCRA requires a financial institution to disclose all of the credit scores that were used in these transactions. For example, if two joint applicants apply for a mortgage loan to purchase a single-family-residence and the lender uses both credit scores, then both need to be disclosed. The statute specifically does not require more than one disclosure per loan; therefore, if multiple scores are used, all of them can be included in one disclosure containing the Notice to the Home Loan Applicant.

If a financial institution uses a credit score that was not obtained directly from a consumer reporting agency, but may contain some information from a consumer reporting agency, this disclosure requirement may be satisfied by providing a score and associated key factor information that were supplied by a consumer reporting agency. For example, certain automated underwriting systems generate a score used in a credit decision. These systems are often populated by data obtained from a consumer reporting agency. If a financial institution uses this automated system, the disclosure requirement may be satisfied by providing the applicants with a score and key factors supplied by a consumer reporting agency based on the data, including credit score(s) that was imported into the automated underwriting system. This will provide applicants with information about their credit history and its role in the credit decision, in the spirit of this section of the statute.

Timing. With regard to the timing of the disclosure, the statute requires that it be provided as soon as is reasonably practicable after using a credit score.

Examination Procedures

1. Determine whether the financial institution uses credit scores in connection with applications for closed-end or open-end loans secured by 1 to 4 family residential real property.
2. Evaluate the institution's policies and procedures to determine whether accurate disclosures are provided to applicants as soon as is reasonably practicable after using credit scores.

3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of disclosures given to home loan applicants to ensure technical compliance with the requirements.

Section 615(a) and (b) Adverse Action Disclosures

The FCRA requires certain disclosures when adverse actions are taken with respect to consumers, based on information received from third parties. Specific disclosures are required depending upon whether the source of the information is: a consumer reporting agency, a third party other than a consumer reporting agency, or an affiliate. The disclosure requirements are discussed separately below.

Information Obtained From a Consumer Reporting Agency. Section 615(a) provides that when adverse action is taken with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the financial institution must:

1. Provide oral, written, or electronic notice of the adverse action to the consumer;
2. Provide to the consumer orally, in writing, or electronically,
   a. the name, address, and telephone number of the consumer reporting agency from which it received the information (including a toll-free telephone number established by the agency, if the consumer reporting agency maintains files on a nationwide basis); and
   b. a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
3. Provide the consumer an oral, written or electronic notice of the consumer's right to obtain a free copy of the consumer report from the consumer reporting agency, within 60 days of receiving notice of the adverse action, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency.

Information Obtained from a Source Other Than a Consumer Reporting Agency. Section 615(b)(1) provides that if credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased, partially or wholly on the basis of information obtained from a person other than a consumer reporting agency and bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the financial institution:

1. At the time an adverse action is communicated to a consumer, must clearly and accurately disclose the consumer's right to file a written request for the reasons for the adverse action; and
2. If it receives such a request within 60 days after the consumer learns of the adverse action, must disclose, within a reasonable period of time, the nature of the adverse information. The information should be sufficiently detailed to enable the consumer to evaluate its accuracy. The source of the information need not be, but may be, disclosed. In some instances, it may be impossible to identify the nature of certain information without also revealing the source.

Information Obtained from an Affiliate. Section 615(b)(2) provides that if a person, including a financial institution, takes an adverse action involving credit (taken in connection with a transaction initiated by a consumer), insurance or employment, based in whole or in part on information provided by an affiliate, it must notify the consumer that the information:

1. Is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control, to the person taking the action;
2. Bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
3. Is not information solely involving transactions or experiences between the consumer and the person furnishing the information; and
4. Is not information in a consumer report.

The notification must inform the consumer of the action and that the consumer may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of transmittal of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information received from the affiliate not later than 30 days after receiving the request.

Examination Procedures

1. Determine whether the financial institution's policies and procedures adequately ensure that appropriate disclosures are provided when adverse action is taken against consumers based on information received from consumer reporting agencies, other third parties, and/or affiliates.
2. Review the financial institution's policies and procedures for responding to requests for information in response to these adverse action notices.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of adverse action notices to determine if they are accurate and in technical compliance.

Section 615(g) Debt Collector Communications Concerning Identity Theft

Section 615(g) has specific requirements for financial institutions that act as debt collectors, that is, the financial institution collects debts on behalf of a third party that is a creditor or other user of a consumer report. The requirements do not apply when a financial institution is collecting its own loans. When a financial institution is notified that any information relating to a debt that it is attempting to collect may be fraudulent or may be the result of identity theft, the financial institution must notify the third party of this fact. In addition, if the consumer, to whom the debt purportedly relates, requests information about the transaction, the financial institution must provide all of the information the consumer would otherwise be entitled to if the consumer wished to dispute the debt under other provisions of law applicable to the financial institution.

Examination Procedures

1. Determine whether the financial institution collects debts for third parties.
2. Determine that the financial institution has policies and procedures to ensure that the third parties are notified if the financial institution obtains any information that may indicate the debt in question is the result of fraud or identity theft.
3. Determine if the institution has effective policies and procedures to provide information to consumers to whom the fraudulent debts relate.
4. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of instances where consumers have alleged identity theft and requested information related to transactions to ensure that all of the appropriate information was provided to the consumer.

Section 615(h) Risk-Based Pricing Notice

Section 615(h) of the FCRA requires users of consumer reports who grant credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers who get credit from or through that person to provide a notice to those consumers who did not receive the most favorable terms. Implementing regulations for this section are under development jointly by the Federal Reserve Board and the Federal Trade Commission. Financial institutions do not have to provide this notice until final regulations are implemented and effective. This section of the examination procedures will be written upon publication of final rules.

Module 4: Financial Institutions as Furnishers of Information

Overview

The Fair Credit Reporting Act (FCRA) contains many responsibilities for financial institutions that furnish information to consumer reporting agencies. These requirements generally involve ensuring the accuracy of the data that is placed in the consumer reporting system. This examination module includes reviews of the various areas associated with furnishers of information. This module will not apply to financial institutions that do not furnish any information to consumer reporting agencies.

Section 623 Furnishers of Information - General

This subsection of the examination procedures will be amended upon completion of inter-agency guidance for institutions regarding the accuracy and integrity of information furnished to consumer reporting agencies. This guidance is required by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). An interagency working group will develop and publish guidance for comment, and will finalize this guidance at a later date. The agencies will also write, at a later date, rules regarding when furnishers must handle direct disputes from consumers.

In the interim period, institutions that furnish information to consumer reporting agencies must comply with the existing requirements in the FCRA. These requirements generally require accurate reporting and prompt investigation and resolution of accuracy disputes. The examination procedures within this sub-section are based largely on the procedures last approved by the FFIEC Task Force on Consumer Compliance in March 2000, but have been revised to include new requirements under the 2003 amendments to the FCRA that do not require implementing regulations. Upon completion of the inter-agency guidance for the accuracy and integrity of information furnished to consumer reporting agencies, this subsection will be significantly revised.

Duties of furnishers to provide accurate information. Section 623(a) states that a person, including a financial institution, may, but need not, specify an address for receipt of notices from consumers concerning inaccurate information. If the financial institution specifies such an address, then it may not furnish information relating to a consumer to any consumer reporting agency, if (a) the financial institution has been notified by the consumer, at the specified address, that the information is inaccurate, and (b) the information is in fact inaccurate. If the financial institution does not specify an address, then it may not furnish any information relating to a consumer to any consumer reporting agency if the financial institution knows or has reasonable cause to believe that the information is inaccurate.

When a financial institution that (regularly and in the ordinary course of business) furnishes information to one or more consumer reporting agencies about its transactions or experiences with any consumer determines that any such information is not complete or accurate, the financial institution must promptly notify the consumer reporting agency of that determination. Corrections to that information or any additional information necessary to make the information complete and accurate must be provided to the consumer reporting agency. Further, any information that remains incomplete or inaccurate must not thereafter be furnished to the consumer reporting agency.

If the completeness or accuracy of any information furnished by a financial institution to a consumer reporting agency is disputed by a consumer, that financial institution may not furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer.

Voluntary closures of accounts. Section 623(a)(4) requires that any person, including a financial institution, that (regularly and in the ordinary course of business) furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that financial institution, must notify the consumer reporting agency of the voluntary closure of the account by the consumer in information regularly furnished for the period in which the account is closed.

Notice involving delinquent accounts. Section 623(a)(5) requires that a person, including a financial institution, that furnishes information to a consumer reporting agency about a delinquent account being placed for collection, charged off, or subjected to any similar action, must, not later than 90 days after furnishing the information to the consumer reporting agency, notify the consumer reporting agency of the month and year of the commencement of the delinquency that immediately preceded the action.

Duties upon notice of dispute. Section 623(b) requires that whenever a financial institution receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information provided by the financial institution to a consumer reporting agency pursuant to section 611 (Procedure in Case of Disputed Accuracy), that financial institution must, pursuant to section 623(b):

1. Conduct an investigation regarding the disputed information;
2. Review all relevant information provided by the consumer reporting agency along with the notice;
3. Report the results of the investigation to the consumer reporting agency;

4. If the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information; and
5. If the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, the financial institution must promptly, for purposes of reporting to the consumer reporting agency:
   a. Modify the item of information,
   b. Delete the item of information, or
   c. Permanently block the reporting of that item of information.

The investigations, reviews and reports required to be made must be completed within 30 days. The time period may be extended for 15 days if a consumer reporting agency receives additional relevant information from the consumer.

Examination Procedures

1. Determine whether the institution provides information to consumer reporting agencies.
2. Review the institution's policies and procedures to ensure compliance with the FCRA requirements for furnishing information to consumer reporting agencies.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, such as a high number of consumer complaints regarding the accuracy of their consumer report information from the financial institution, select a sample of reported items and the corresponding loan or collection file to determine that the financial institution:
   a. Did not report information that it knew, or had reasonable cause to believe, was inaccurate. Section 623(a)(1)(A) [15 U.S.C §1681s-2(a)(1)(A)];
   b. Did not report information to a consumer reporting agency if it was notified by the consumer that the information was inaccurate and the information was, in fact, inaccurate. Section 623(a)(1)(B) [15USC §1681s-2(a)(1)(B)];
   c. Did provide the consumer reporting agency with corrections or additional information to make the information complete and accurate, and thereafter did not send the consumer reporting agency the inaccurate or incomplete information in situations where the incomplete or inaccurate information was provided. Section 623(a)(2) [15 USC §1681s-2(a)(2)];
   d. Furnished a notice to a consumer reporting agency of a dispute in situations where a consumer disputed the completeness or accuracy of any information the institution furnished, and the institution continued furnishing the information to a consumer reporting agency. Section 623(a)(3) [15 U.S.C §1681s-2(a)(3)];
   e. Notified the consumer reporting agency of a voluntary account-closing by the consumer, and did so as part of the information regularly furnished for the period in which the account was closed. Section 623(a)(4) [15 USC§1681s-2(a)(4)]; and
   f. Notified the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action. The notification to the consumer reporting agency must be made within 90 days of furnishing information about a delinquent account that was being placed for collection, charged-off, or subjected to any similar action. Section 623(a)(5) [15 USC §1681s-2(a)(5)].
4. If weaknesses within the financial institution's procedures for investigating errors are revealed, review a sample of notices of disputes received from a consumer reporting agency and determine whether the institution:
   a. Conducted an investigation with respect to the disputed information. Section 623(b)(1)(A) [15 USC §1681s-2(b)(1)(A)];
   b. Reviewed all relevant information provided by the consumer reporting agency. Section 623(b)(1)(B) [15 USC §1681s-2(b)(1)(B)];
   c. Reported the results of the investigation to the consumer reporting agency. Section 623(b)(1)(C) [15 USC §1681s-2(b)(1)(C);
   d. Reported the results of the investigation to all other nationwide consumer reporting agencies to which the information was furnished, if the investigation found that the reported information was inaccurate or incomplete. Section 623(b)(1)(D) [15 USC §1681s-2)(b)(1)(D)]; and
   e. Modified, deleted, or blocked the reporting of information that could not be verified.

Section 623(a)(6) Prevention of Re-Pollution of Consumer Reports

Section 623(a)(6) has specific requirements for furnishers of information, including financial institutions, to a consumer reporting agency that receive notice from a consumer reporting agency that furnished information may be fraudulent as a result of identity theft. Section 605B requires consumer reporting agencies to notify furnishers of information, including financial institutions, that the information may be the result of identity theft, an identity theft report has been filed, and that a block has been requested. Upon receiving such notice, section 623(a)(6) requires financial institutions to establish and follow reasonable procedures to ensure that this information is not re-reported to the consumer reporting agency, thus "re-polluting" the victim's consumer report.

Examination Procedures

1. If the financial institution provides information to a consumer reporting agency, review the institution's policies and procedures to ensure that items of information blocked due to an alleged identity theft are not re-reported to the consumer reporting agency.
2. If weaknesses are noted within the financial institution's policies and procedures, review a sample of notices from a consumer reporting agency of allegedly fraudulent information due to identity theft furnished by the financial institution to ensure that the institution does not re-report the item to a consumer reporting agency.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, verify that the financial institution has not sold or transferred a debt that was caused by an alleged identity theft.

NOTE: Section 615(f) of the FCRA also prohibits a financial institution from selling or transferring debt caused by an alleged identity theft.

Section 623(a)(7) Negative Information Notice. Section 623(a)(7) requires financial institutions to provide consumers with a notice either before negative information is provided to a nationwide consumer reporting agency, or within 30 days after reporting the negative information.

Negative information. For these purposes, negative information means any information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

Nationwide consumer reporting agency. Section 603(p) defines a consumer reporting agency as one that compiles and maintains files on consumers on a nationwide basis and regularly engages in the practice of assembling or evaluating and maintaining the following two pieces of information about consumers residing nationwide for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity:

1. Public Record Information.
2. Credit account information from persons who furnish that information regularly and in the ordinary course of business.

Institutions may provide this disclosure on or with any notice of default, any billing statement, or any other materials provided to the customer, as long as the notice is clear and conspicuous. Institutions may also choose to provide this notice to all customers as an abundance of caution. However, this notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

Model text. As required by the FCRA, the Federal Reserve Board developed the following model text that institutions can use to comply with these requirements. The first model contains text to be used when institutions choose to provide a notice before furnishing negative information. The second model form contains text to be used when institutions provide notice within 30 days after reporting negative information:

1. *Notice prior to communicating negative information (Model B-1):*

   "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report."
2. *Notice within 30 days after communicating negative information (Model B-2)*:

   "We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report."

Use of the model form(s) is not required; however, proper use of the model forms provides financial institutions with a safe harbor from liability. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that the model notices provide. Acceptable changes include, for example,

1. Rearranging the order of the references to "late payment(s)," or "missed payment(s);"
2. Pluralizing the terms "credit bureau," "credit report," and "account;"
3. Specifying the particular type of account on which information may be furnished, such as "credit card account;" or
4. Rearranging in Model Notice B-1 the phrases "information about your account" and "to credit bureaus" such that it would read "We may report to credit bureaus information about your account."

Examination Procedures

1. If the financial institution provides negative information to a nationwide consumer reporting agency, verify that the institution's policies and procedures ensure that the appropriate notices are provided to customers.
2. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of notices provided to consumers to determine compliance with the technical content and timing requirements.

(This page intentionally left blank.)

Module 5: Consumer Alerts and Identity Theft Protections

Overview

The Fair Credit Reporting Act (FCRA) contains several provisions for both consumer reporting agencies and users of consumer reports including financial institutions that are designed to help combat identity theft. This module applies to financial institutions that are not consumer reporting agencies, but are users of consumer reports.

Two primary requirements exist: first, a user of a consumer report that contains a fraud or active duty alert must take steps to verify the identity of an individual to whom the consumer report relates, and second, a financial institution must disclose certain information when consumers allege that they are the victims of identity theft.

Section 605A(h) Fraud and Active Duty Alerts

Initial fraud and active duty alerts. Consumers who suspect that they may be the victims of fraud including identity theft may request nationwide consumer reporting agencies to place initial fraud alerts in their consumer reports. These alerts must remain in a consumer's report for no less than 90 days. In addition, members of the armed services who are called to active duty may also request that active duty alerts be placed in their consumer reports. Active duty alerts must remain in these service members' files for no less than 12 months.

Section 605A(h)(1)(B) requires users of consumer reports, including financial institutions, to verify a consumer's identity if a consumer report includes a fraud or active duty alert. Unless the financial institution uses reasonable policies and procedures to form a reasonable belief that they know the identity of the person making the request, the financial institution may not:

1. Establish a new credit plan or extension credit (other than under an open-end credit plan) in the name of the consumer;
2. Issue an additional card on an existing account; or
3. Increase a credit limit.

Extended Alerts. Consumers who allege that they are the victim of an identity theft may also place an extended alert, which lasts seven years, on their consumer report. Extended alerts require consumers to submit identity theft reports and appropriate proof of identity to the nationwide consumer reporting agencies.

Section 605A(h)(2)(B) requires a financial institution that obtains a consumer report that contains an extended alert to contact the consumer in person or by the method listed by the consumer in the alert prior to performing any of the three actions listed above.

Examination Procedures

1. Determine whether the financial institution has effective polices and procedures in place to verify the identity of consumers in situations where consumer reports include fraud and/or active duty military alerts.
2. Determine if the financial institution has effective policies and procedures in place to contact consumers in situations where consumer reports include extended alerts.
3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of transactions in which consumer reports including these types of alerts were obtained. Verify that the financial institution complied with the identity verification and/or consumer contact requirements.

Section 609(e) Information Available to Victims

Section 609(e) requires financial institutions to provide records of fraudulent transactions to victims of identity theft within 30 days after the receipt of a request for the records. These records include the application and business transaction records under the control of the financial institution whether maintained by the financial institution or another person on behalf of the institution (such as a service provider). This information should be provided to:

1. The victim;
2. Any federal, state, or local government law enforcement agency or officer specified by the victim in the request; or
3. Any law enforcement agency investigating the identity theft that was authorized by the victim to take receipt of these records.

The request for the records must be made by the victim in writing and be sent to the financial institution to the address specified by the financial institution for this purpose. The financial institution may ask the victim to provide information, if known, regarding the date of the transaction or application, and any other identifying information such as an account or transaction number.

Unless the financial institution, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making the request for information before disclosing any information to the victim, the financial institution must take prudent steps to positively identify the person requesting information. Proof of identity can include:

1. A government-issued identification card;
2. Personally identifying information of the same type that was provided to the financial institution by the unauthorized person; or

3. Personally identifiable information that the financial institution typically requests from new applicants or for new transactions.

At the election of the financial institution, the victim must also provide the financial institution with proof of an identity theft complaint, which may consist of a copy of a police report evidencing the claim of identity theft and a properly completed affidavit. The affidavit can be either the standardized affidavit form prepared by the Federal Trade Commission (published in April 2005 in 70 Federal Register 21792), or an "affidavit of fact" that is acceptable to the financial institution for this purpose.

When these conditions are met, the financial institution must provide the information at no charge to the victim. However, the financial institution is not required to provide any information if, acting in good faith, the financial institution determines that:

1. Section 609(e) does not require disclosure of the information;
2. The financial institution does not have a high degree of confidence in knowing the true identity of the requestor, based on the identification and/or proof provided;
3. The request for information is based on a misrepresentation of fact by the requestor; or
4. The information requested is Internet navigational data or similar information about a person's visit to a web site or online service.

Examination Procedures

1. Review financial institution policies, procedures, and/or practices to ensure that identities and claims of fraudulent transactions are verified and that information is properly disclosed to victims of identity theft and/or appropriately authorized law enforcement agents.
2. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of these types of requests to ensure that the financial institution properly verified the requestor's identity prior to disclosing the information.

References

Other resources for FCRA may be found at:

FIL 61-2001: Guidance on the Permissible Use of Consumer Reports in Certain Business Related Extensions of Credit
http://www.fdic.gov/news/news/financial/2001/fil0161.html

FIL 18-2006: Interagency Fair Credit Reporting Act Revised Examination Procedures
http://www.fdic.gov/news/news/financial/2006/fil06018.html

Electronic version of FFIEC FCRA Examination Procedures
http://fdic01/division/dsc/compliance.html

Statute: Fair Credit Reporting Act
http://www.fdic.gov/regulations/laws/rules/6500-1100.html#6500601

Job Aids

Statutory and Regulatory Matrix

The followwing table contains the statutory or regulatory cites for each provision of the FCRA covered by these examination procedures that are applicable to financial institutions that are not consumer reporting agencies[3]. Some of the requirements are self-executing by the statute, while others are contained in interagency regulations, while others still are contained in regulations published by only one or two of the regulatory agencies. Some requirements are subject to regulations that are not yet finalized and thus are listed as to-be-determined (TBD) in the table below. The regulatory agencies are listed in the first horizontal line and the various compliance responsibilities are presented in the order that they appear in the various examination modules in the first column. Financial institutions are subject to the list of cites in the column containing their primary federal regulator.

3 Other FCRA provisions applicable to non-consumer reporting agency banks, thrifts, and credit unions are covered in other examinations, such as risk management, information technology, etc. and are thus not part of these procedures. These provisions include Sections 605 (Reconciling Addresses); 615 (Red Flag Guidelines); and 628 (Disposal Rules).

Compliance Responsibility	Federal Reserve Board	FDIC	OCC	OTS	NCUA
Module 1					
Obtaining Consumer Reports the FCRA	§604 and §606 of he FCRA	**§604 and §606 of the FCRA**	§604 and §606 of the FCRA	§604 and §606 of the FCRA	§604 and §606 of
Module 2					
Information Sharing & Affiliate Sharing Opt Out	§603(d) of the FCRA	**§603(d) of the FCRA**	§603(d) of the FCRA	§603(d) of the FCRA	§603(d) of the FCRA
Protection of Medical Information	§222 of FRB Regulation V	**§334 of FDIC Regulations**	§41 of OCC Regulations	§571 of OTS Regulations	§717 of NCUA Regulations
Affiliate Marketing Opt Out	TBD	**TBD**	TBD	TBD	TBD
Module 3					
Employment Disclosures	§604(b)(2) of the FCRA	**§604(b)(2) of the FCRA**	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA
Prescreened Consumer Reports	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	**§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698**	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698
Truncation of Credit and Debit Card Account Numbers	§605(g) of the FCRA	**§605(g) of the FCRA**	§605(g) of the FCRA	§605(g) of the FCRA	§605(g) of the FCRA
Credit Score Disclosures	§609(g) of the FCRA	**§609(g) of the FCRA**	§609(g) of the FCRA	§609(g) of the FCRA	§609(g) of the FCRA
Adverse Action Disclosures	§615 of the FCRA	**§615 of the FCRA**	§615 of the FCRA	§615 of the FCRA	§615 of the FCRA
Debt Collector Communications	§615(g) of the FCRA	**§615(g) of the FCRA**	§615(g) of the FCRA	§615(g) of the FCRA	§615(g) of the FCRA
Risk-Based Pricing Notice	TBD	**TBD**	TBD	TBD	TBD
Module 4					
Furnishers of Information – General	§623 of the FCRA	**§623 of the FCRA**	§623 of the FCRA	§623 of the FCRA	§623 of the FCRA
Prevention of Re-Pollution of Reports	§623(a)(6) of the FCRA	**§623(a)(6) of the FCRA**	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA
Negative Information Notice	§623(a)(7) of the FCRA and Appendix B of §222 of FRB Regulation V	**§623(a)(7) of the FCRA and Appendix B of §222 of FRB Regulation V**	§623(a)(7) of the FCRA and Appendix B of §222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of §222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of §222 of FRB Regulation V
Module 5					
Fraud & Active Duty Alerts	§605A(h)(2)(B) of the FCRA	**§605A(h)(2)(B) of the FCRA**	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA
Information Available to Victims	§609(e) of the FCRA	**§609(e) of the FCRA**	§609(e) of the FCRA	§609(e) of the FCRA	§609(e) of the FCRA

(This page intentionally left blank.)

IX. Retail Sales

Contents

Retail Investment Sales **IX–1.1**
Introduction IX–1.1
Supervisory Responsibility IX–1.1
Overview of Examination Approach IX–1.1
Policy and Regulatory Requirements IX–1.2
Examination Procedures IX–1.3
Compliance Management System Review IX–1.3
Expanded Analysis IX–1.8
References IX–1.10
Job Aids IX–1.13
Retail Insurance Sales **IX-2.1**
Introduction IX-2.1
Regulatory and Policy Requirements IX-2.1
Examination Procedures IX-2.1
Expanded Analysis IX-2.4
Documenting Examination Findings. IX-2.4
References IX-2.4
Job Aids IX-2.6

(This page intentionally left blank.)

Retail Investment Sales[1]

Introduction

These compliance examination procedures and guidance apply to retail recommendations or sales of securities by, on behalf of, or on the premises of FDIC supervised institutions. "Retail" in this context means securities recommendations or sales activities which are conducted separately from a bank's trust or fiduciary activities.[2] While these "retail" activities are primarily conducted with consumers, they can be conducted with commercial customers under certain circumstances.

Generally, securities are financial instruments that grant an ownership position or the right to purchase one. They are not insured by the FDIC. Moreover, one of their most significant features is investment risk, i.e., the risk that purchasers may lose part or all of their invested principal. Securities include individual stocks and bonds, mutual funds, self-directed individual retirement accounts (IRA) that invest in securities[3], and annuities.[4] Securities sales activities have the potential to bolster bank earnings, increase bank competitiveness, and provide bank customers with additional services. However, these types of activities also have the potential to confuse customers, expose banks to contingent liabilities, and damage the reputation of these institutions. Therefore, examiners must evaluate an institution's retail securities activities with care. A list of key terms is available under the Job Aids section of this chapter.

Supervisory Responsibility

Generally, parties that recommend or sell securities must register with the Securities and Exchange Commission (SEC) as broker-dealers. Once registered, broker dealers are subject to regulation by the SEC and National Association of Securities Dealers (NASD). However, until the Gramm-Leach-Bliley Act (GLBA) was enacted in 1999, banks were exempt from these requirements. Once Title II of GLBA becomes effective, banks that offer securities will have a choice. They may either register with the SEC as broker dealers or confine their programs to a list of activities exempt from registration. Due to the capital requirements imposed on broker dealers by the SEC, most banks prefer to limit their securities sales activities to those that do not require SEC registration. Pursuant to §201 of GLBA, a bank is exempt from registration as a broker[5] when it sells securities as part of:

- third party arrangements conducted pursuant to written agreements;
- certain stock purchase plans;
- sweep accounts;
- affiliate transactions;
- private securities offerings;
- safekeeping and custody activities;
- transactions defined as permissible under GLBA;
- banking products specifically identified by GLBA;
- municipal securities;
- a *de minimus* number of transactions, i.e., less than 500 per year; or
- trust and fiduciary activities.

Under GLBA, federal bank regulators will eventually become responsible for verifying that banks accurately document compliance with exemptions from registration. The FDIC and other banking agencies will issue the regulations necessary to do so once the SEC defines the scope of the registration exemptions.[6] Until then, compliance examiners are *not* required to assess bank compliance with exemptions to registration. However, banks involved in securities sales should be made aware of the GLBA provisions that relate to this area.

NOTE: It is important to understand that a bank, an affiliate of a bank, or a third party vendor which is registered with the SEC as a broker-dealer is subject to regulation by the SEC and securities self regulatory organizations such as the NASD. As a result, these examination procedures do not attempt to evaluate compliance with SEC or NASD rules or regulations. However, compliance examiners should confirm that registered broker dealers employ properly licensed sales representatives.

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-038: Revised Compliance Examination Procedures and Supervisory Guidance.

2 Bank trust and fiduciary activities are viewed as non-retail. DSC Trust Examination staff is responsible for the examination of these types of activities. Compliance examiners are responsible for reviewing retail investment sales activities regardless of where a bank conducts them, even if they occur within the same division or department where a bank conducts trust operations. In such situations, coordination with DSC Trust examiners is encouraged to ensure that activities receive the appropriate review.

3 This includes IRA and Keogh accounts offered outside of a bank's Trust Department, when a bank offers self-directed custodial accounts that are established by individuals for their own benefit. When customers use such accounts to invest in securities sold by the bank or pursuant to a third party arrangement with the bank, they have engaged in a retail securities sales activity that should be reviewed by compliance examiners under these procedures.

4 The sale of annuities is supervised as both an insurance and an investment activity. Consequently, banks that offer these products should be examined under both these procedures and the Compliance Examination Procedures and Supervisory Guidance for Retail Insurance Sales.

5 GLBA also contains a list of activities that banks may conduct without registering with the SEC as securities dealers. These activities are reviewed as part of risk management examinations. They are beyond the scope of these procedures.

6 The SEC has made two proposals intended to define the bank brokerage exceptions. Neither has been finalized.

Overview of Examination Approach

During the compliance examination of a bank that offers investment products, examiners must consider the bank's retail securities activities when assessing the quality of the bank's compliance management system (CMS).

Examiners must determine whether the CMS appropriately manages the risks involved in retail securities sales activities, including adherence to the Interagency Statement on Retail Sales of Nondeposit Investment Products (Interagency Statement)[7], FDIC Part 344 – Recordkeeping and Confirmation Requirements for Securities Transactions[8] , Treasury Regulations Part 403.5(d) – Custody of Securities Held by Financial Institutions that are Government Securities Brokers and Dealers[9] , and Treasury Regulations Part 450 – Custodial Holdings of Government Securities by Depository Institutions[10]. In doing so, examiners should consider all documentation related to retail securities sales, including, but not limited to, agreements with third parties, sales activity volume and financial reports, standard disclosures and acknowledgment forms, records which document the qualifications of sales personnel, and proprietary product management reports. Based on the examiner's conclusions about the bank's CMS as it relates to retail investment sales, a determination should be made about the extent of transaction sampling and testing necessary to complete the compliance examination.[11]

At the end of the examination, examiners should document their conclusions about the bank's retail securities activities in the Risk Profile and Scoping Memorandum, examination work papers, and Report of Examination, as appropriate. Banks that fail to comply with applicable laws and regulations, or fail to establish and observe appropriate policies and procedures consistent with the Interagency Statement in connection with retail securities sales activities, should be subject to criticism in the Report of Examination and appropriate corrective action.

Policy and Regulatory Requirements

The Interagency Statement on Retail Sales of Nondeposit Investment Products

- Applies to all retail securities activities transacted with *consumer customers*[12] of an insured depository institution, regardless of whether the institution offers securities directly or through an arrangement with a third party. Moreover, the Interagency Statement applies to a dual employee of the bank and a third party when the employee effects retail securities transactions.
- Provides for specific actions banks should take with regard to program management, disclosures, sales setting, personnel qualifications, suitability, and compensation to effectively manage its securities sales programs and protect securities customers.

FDIC Part 344, Recordkeeping and Confirmation Requirements for Securities Transactions

- Applies to any retail securities transactions effected by banks for *consumer or commercial customers*, with the following exceptions:
  - Transactions Effected by Registered Broker/Dealers: This regulation in its entirety does not apply to transactions in which: (1) the broker/dealer is fully disclosed to the bank customer, and (2) the bank customer has a direct contractual agreement with the broker/dealer. This broad exemption extends to arrangements which involve a dual employee of the bank and broker/dealer, when the employee is acting as an employee of, and subject to the supervision of, the registered broker dealer.
  - Municipal Securities: This regulation in its entirety does not apply to municipal securities transactions effected at a bank registered with the SEC as a municipal securities dealer.
  - Foreign Branches: This regulation in its entirety does not apply to transactions at foreign branches of a bank.
  - Small Number of Transactions: Certain recordkeeping and securities trading policies and procedures of the regulation do not apply to a bank effecting an average of fewer than 200 transactions (excluding government securities transactions) per year.[13]
  - Government Securities: The settlement and personal securities trading requirements of the regulation do not apply to banks conducting transactions in government securities; and the recordkeeping requirements do not apply to banks effecting fewer than 500 government securities transactions per year.
- Requires banks to provide customers with written confirmation notices and to maintain appropriate records and controls with respect to retail securities transactions they effect.

7 FDIC Laws, Regulations, Related Acts, and Statements of Policy.

8 *See* 12 CFR 344.

9 *See* 17 CFR 403.5(d).

10 *See* 17 CFR 450.

11 Examiners should refer to the general compliance examination procedures for guidance on transaction sampling and testing.

12 The Interagency Statement **does not** apply to trust activities. When trust powers are exercised, transactions should occur in segregated non-retail departments.

13 The average is to be determined using the prior three calendar year period.

Treasury Regulations Part 403.5(d), Custody of Securities Held by Financial Institutions that are Government Securities Brokers and Dealers

- Applies to any bank that retains custody of government securities that are part of a retail repurchase agreement between the bank and its *consumer or commercial customers*.
- Requires banks to provide customer disclosures, customer transaction confirmation notices, and maintain procedures pertaining to possession and control of government securities.

Treasury Regulations Part 450, Custodial Holdings of Government Securities by Depository Institutions

- Applies to any bank that retains possession of government securities sold under a repurchase agreement with *consumer or commercial customers*, or banks that hold customer government securities as custodian or in safekeeping.
- Requires banks to issue confirmation or safekeeping receipts for government securities held for customers, properly segregate the securities, and maintain appropriate controls and records for those securities.

Definitions

"Annuities" are contracts that guarantee income (typically for an individual's lifetime) in exchange for a lump sum or periodic payment. The terms are usually based upon the individual's expected lifetime and anticipated market conditions. A variable annuity guarantees payments, but does not guarantee the payment amounts. Variable annuities are securities, contain investment risk, and investors select level of investment risk.

"Bank Securities Representatives" are bank employees who solicit, recommend, and effect investment transactions for retail customers within an insured depository institution's direct investment sales program. Dual and third-party employees are not bank securities representatives.

"Brokers" charge a fee or commission for executing customer transactions, or for providing services (for example, investment advice).

"Discount Brokers" simply execute transactions and maintain customer accounts in exchange for fees or commissions, but do not provide investment advice. All discount brokerage transactions are unsolicited.

"Dual Employees" are employed by both the bank and a third-party.

"Full-service Brokers" provide complete investment services, including investment advice, in exchange for fees or commissions.

"Hybrid Accounts" which include sweep accounts, combine elements of insured deposits and investments.

"Investments" are transactions in which money is contributed for the purpose of obtaining income or profit, but which carries the risk of loss of all or part of the principal contributed and income accumulated.

"Investment Advisers" include any individual who offers investment advice in exchange for compensation.

"Networking Arrangements" are agreements between banks and third-party vendors that enable vendors to sell or recommend investments to bank customers on bank premises or through customer referrals.

"Proprietary Products" are products that the bank or bank affiliate markets principally to bank or affiliate customers.

"Repurchase Agreements" are contracts to sell and subsequently repurchase securities at a specified date and price.

"Sales Representatives" recommend or sell investments on bank premises or through customer referrals, and may be NASD licensed and registered representatives or, where the bank sells securities directly to customers pursuant to an exception from registration, sales representatives may be Bank Securities Representatives.

"Sweep Accounts" include any accounts that employ prearranged, automatic funds transfers (above a preset dollar balance) from a deposit account to purchase securities. Sweep accounts also include accounts that use prearranged, automatic securities sales or redemptions to replenish a deposit account that falls below a preset dollar balance.

"Unsolicited Transactions" occur when customers direct sales representatives to initiate transactions that were not recommended or suggested by any individual connected with the investment sales operation.

Examination Procedures

Examiners should complete as many of the following examination procedures as necessary to effectively assess the quality of the bank's CMS in this area and the bank's adherence to the Interagency Statement and the regulations described above. Where risks are properly managed by the bank and transaction testing is not considered necessary to support the examiner's conclusions, the review may be concluded after the core analysis of the CMS. However,

if transaction testing is necessary, then examiners should continue the examination using the Expanded Analysis in the subsequent section of this chapter.

Compliance Management System Review

Pre-Examination Planning

Examiners should follow the general compliance examination procedures pertaining to pre-examination planning, found in the compliance examination procedures manual, to gather as much information as possible about a bank's retail securities sales activities. Discussions with bank management during the pre-examination planning phase of the examination, along with the Compliance Information and Document Request should be used by the examiner to gather enough current information from the bank to ascertain the following about the bank:

- Does the bank conduct retail securities sale activities?
- Is the bank conducting the sale of securities as a registered broker-dealer with the SEC or has the bank already limited its activities to those exempt from registration pursuant to GLBA?
- Does a third party conduct retail securities sales activities on bank premises or through customer referrals from the bank?
- Is the third party a registered broker/dealer with the SEC?
- What type of customers does the bank sell such products to – consumer and/or commercial customers?
- How many retail securities transactions (including both sales and purchases) were conducted for customers by the bank per year for the prior three calendar years?
- What type of securities sales activities are conducted – stocks, bonds, mutual funds, government securities, annuity products[14] , repurchase agreements, sweep account arrangements, proprietary products, self-directed Individual Retirement Accounts/KEOGHs?

Banks should conduct independent compliance reviews of the retail securities program to ensure that it complies with all laws, regulations, Interagency Statement, and internal policies and procedures. An independent review report may be prepared separately from an audit report. As such, examiners should request a copy of the independent review report during the pre-examination planning phase of the examination, and use it as appropriate in developing the risk profile of the bank.

GLBA requires bank regulators to rely, to the fullest extent possible, on securities regulators for supervisory information concerning securities affiliates of state non-member banks. Reports and investor complaint data from other regulators can be an important source of information about a third party's securities sales activities and a bank's proprietary product activities. Therefore, relevant information should be requested from the SEC, NASD, or state as soon as reasonably possible to ensure that it is available for the Review and Analysis portion of the examination.[15]

Review and Analysis

After reviewing the information gathered during the pre-examination planning phase of the examination, the examiner should determine which, if any, of the above policy and regulations may apply to the bank (**Job Aid** available at the end of these procedures).

Examiners should use the guidance below to evaluate the bank's CMS (i.e., board and senior management oversight, compliance program, and audit function) as it pertains to retail securities activities to determine whether risks are adequately managed. After completing the review of the bank's CMS, examiners should document their conclusions about the retail securities program area through written responses to the Decision Factors described on page IX–1.7. The written response should be retained in the examination workpapers.

Board and Senior Management Oversight Evaluation

Determine that the bank's board of directors has adopted a written retail securities sales policy statement that contains the elements required in the Interagency Statement. The policy statement, in detail commensurate with the level and complexity of the securities sales program, should:

- Address the risks associated with the program;
- Summarize the program's policies, procedures, and controls; and
- Clearly define the scope of any third party activities, and the bank's monitoring of the third parties adherence to the Interagency Statement and applicable laws and regulations.

Determine that the board of directors periodically reviews and updates, as necessary, the retail securities sales policy statement.

For retail securities activities conducted through a networking arrangement with a third-party vendor, also verify that:

14 For annuity product sales, also *see* the *Compliance Examination Procedures and Supervisory Guidance for Retail Insurance Sales.* Where the Interagency Statement and FDIC Part 343 Consumer Protections in Sales of Insurance overlap, a bank that engages in conduct that fails to adhere to both should only be criticized for violating Part 343.

15 DSC Regional Offices are responsible for contacting NASD Regional Offices to establish information sharing procedures consistent with the Memorandum of Understanding executed by the federal banking agencies and the NASD. Compliance examiners should contact the appropriate Regional Office staff to coordinate communication and information requests with other functional regulators. *See* DCA RD Memo 01-005: Insurance and Non-Deposit Investment Products: Transfer of Responsibilites from DOS to DCA.

- The bank conducted an appropriate review of the third party's qualifications, experience, regulatory history, financial condition, and references prior to entering into the arrangement;
- The arrangement is controlled by a written agreement that is approved by the bank's board of directors and contains, at a minimum, the following elements:
  - Description of each party's duties and responsibilities;
  - Description of the permissible activities by the third party on bank premises;
  - Controls for the use of bank space, personnel, and equipment;
  - Detailed compensation arrangements for all bank and third party personnel;
  - Requirement that sales representatives are appropriately trained, licensed, and qualified;
  - Requirement that the third party comply with all applicable laws, regulations, and the Interagency Statement;
  - Authorization for the bank to monitor the activities of the third party and its sales representatives and to periodically review compliance with the agreement;
  - Authorization for the bank and its banking regulatory agency to have access to such records of the third party as are necessary or appropriate to evaluate compliance;
  - Indemnification for the bank for potential liability caused by the third party's sales activities; and
  - Written employment contracts satisfactory to the bank for personnel employed by both the bank and the third party (dual employees); and
- Bank senior management periodically monitors the third party's compliance with the agreement. This function should be performed by individuals that are not involved in any part of the investment sales operation. Reviews may be conducted by internal auditors, external auditors, or other independent staffers.

For proprietary products offered by the bank, also:

- Determine that the board of directors established policies that guide the management and operations of any proprietary product, and maintains prudent oversight of all proprietary product operations, including those of the bank affiliates.
- Verify that the board's policies:
  - Require separation of duties between trading, sales, management, and accounting;
  - Define bank management's responsibilities;
  - Establish an independent review function; and
  - Outline strategies for potentially significant events, such as a capital injection.

Compliance Program Evaluation

Policies, Procedures and Internal Controls

Determine that the retail securities sales program's policies and procedures include a description of the following elements contained in the Interagency Statement:

- Types of products sold;
- Designation of employees to sell investment products;
- Supervision of personnel involved in sales;
- Permissible use of customer information; and
- Compliance procedures to ensure sales activities are conducted in accordance with applicable laws, regulations, and the Interagency Statement.

Review the policies, procedures and practices of the bank in the following areas to:

Sales Setting

Determine that the area in which security products are sold is physically distinct from the area in which retail deposits are taken.

- Verify that employees do not make investment recommendations, qualify customers, or take orders for investment products, even if unsolicited, while located in the routine deposit-taking area. (This includes reviewing a bank's policy, procedures, and any prepared scripts on handling deposit customers, or customers whose certificates of deposit are maturing.)

Referrals

Verify that employees who are not authorized and qualified to sell securities only make referrals, and do not make investment recommendations, qualify customers, or take orders for investment products. (This includes reviewing a bank's policy, procedures, and any prepared scripts on referring deposit customers, or customers whose certificates of deposit are maturing.)

- Determine that management and staff (including tellers and receptionists) adhere to all applicable laws, regulations, the Interagency Statement, and the bank's securities sales policy when making customer referrals.

Suitability

Determine that in recommending to customers the purchase, sale, or exchange of any security, sales representatives gather appropriate and sufficient information from the customers and

conduct a suitability analysis (sales representatives should have reasonable grounds for believing that a recommendation is suitable for a customer upon the basis of the information disclosed by the customer). Sales representatives should make reasonable efforts to obtain the following types of information:

- Customer Investment Goals
  - Risk tolerance
  - Return objectives
  - Tax considerations
  - Liquidity
- Customer Financial Information
  - Assets, liabilities, and net worth
  - Income and expenses
  - Investment portfolio composition
  - Tax status
  - Insurance
- Customer Nonfinancial Factors
  - Age and retirement plans
  - Family status
  - Current and anticipated education needs
  - Current and anticipated health care needs

Determine that sales representatives clearly explain all investment recommendations to customers and provide complete information to customers regarding investment risks.

Verify that the sales representatives document the suitability analysis of their investment recommendations to customers.

Compensation

Determine that compensation to bank employees for customer referrals is a one-time nominal fee of a fixed dollar amount for each referral, and that the compensation is paid regardless of whether the referral results in a transaction.

Determine that incentive compensation for bank employees authorized to sell securities products is not structured in such a way as to result in unsuitable recommendations or sales being made to customers.

Sales Practices

If the bank conducts the securities transactions, determine that the bank:

- Provides for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where applicable and where permissible under local law; and
- Provides for the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination.

Verify that specific individuals are designated to exercise supervisory responsibility for each of the bank's securities activities.

Verify that there is a separation of duties among securities sales, management, compliance, and accounting personnel.

Determine that bank personnel who make investment recommendations or obtain investment information as part of their duties report their own non-exempt securities transactions to the bank each quarter.

For banks that transact retail hold-in-custody repurchase agreements involving government securities, also:

- Determine that the bank enters into written repurchase agreements with customers that contain appropriate disclosures, including a disclosure that the funds held pursuant to the repurchase agreement are not deposits nor insured by the FDIC.
- Verify that the bank maintains proper possession and control of the government securities that are the subject of the agreement with its customers in accordance with Treasury Regulation 450.4(a). (*See* below)

For banks that hold government securities as a custodian or in safekeeping for the account of a customer [16], also:

- Determine that the bank maintains proper possession and control of the government securities it holds for its customer accounts (including where the bank uses another institution or the Federal Reserve Bank to hold the securities).
- Determine that the bank maintains proper possession and control of the government securities it holds as a custodian for customer accounts of other institutions or government securities broker/dealers.

Disclosures, Notices, Confirmations, and Advertisements

Determine that standard disclosures, oral and written, and confirmation notices contain the required content, and are provided to customers at the appropriate time in the proper format. In particular, verify that disclosures contain at least the following minimum required content:

16 Safety and Soundness and Trust examination staff remain responsible for evaluating custodial holdings of government securities which are based on a trust or fiduciary relationship. If a bank claims an exemption to the Treasury Regulation 450 under 450.3, *Exemption for holdings subject to fiduciary standards*, examiners should verify that the requirements are met under that part of the regulation.

- *not* insured by the FDIC;
- *not* deposits or obligations of the bank or its affiliates;
- *not* guaranteed by the bank or its affiliates; and
- are subject to investment risk, including possible loss of principal

Verify that the bank obtains the required customer acknowledgements of receipt of disclosures at the time the customer opens an account to purchase investment products.

Verify that the names of the security products being sold are not identical to the name of the bank.

Determine that advertisements or promotional material about retail securities are issued in accordance with the Interagency Statement, and in particular:

- Verify that any third party advertising or promotional material clearly identifies the company selling the security product and does not suggest that the bank is the seller.

Verify that the bank discloses, where applicable, the existence of any material relationships with an affiliate or an investment advisor as identified in the Interagency Statement.

Determine that when the bank represents that investment products are covered by insurance provided by any other entity than the FDIC, the bank also provides a clear and accurate explanation of this coverage.

For proprietary products offered by the bank, also determine that sales representatives provide customers with disclosures that clearly inform customers of:

- Additional compensation earned for selling a proprietary product rather than another product;
- The product's fee structure, as compared to other investment products offered at the bank;
- The product's risk profile, as compared to other investment products offered at the bank; and
- The product's historical performance, as compared to other investment products offered at the bank.

For banks that transact retail hold-in-custody repurchase agreements involving government securities, also:

- Determine that the bank provides written confirmations at the end of the day of initiation of the repurchase transaction.
- Determine that the written confirmations contain all required information.

For banks that hold government securities as a custodian or in safekeeping for the account of a customer, also:

- Determine that bank provides a written confirmation or safekeeping receipt for each security held for a customer.
- Determine that the written confirmations or safekeeping receipts contain all required information.

Personnel Qualifications

Determine that the bank investigates the backgrounds of employees and third party vendors it hires for its retail securities sales program, including confirming that applicants remain in good professional standing and are not subject to disciplinary or enforcement action by any securities self regulatory agency, the SEC, or any state or federal bank regulatory agency.

Determine that security sales employees and management are qualified (appropriate licensing, registration, training, and experience) to conduct their authorized duties:

- Where the bank is registered as a broker-dealer, bank securities representatives must meet applicable professional qualification requirements.
  - The following NASD licenses, earned after passing standardized examinations, permit holders to engage in prescribed activities.
    - Series 6: Investment Company and Variable Contract Products Limited Representative, authorized to sell only mutual funds and annuities.
    - Series 7: General Securities Representative, may sell all securities except commodities.
    - Series 11: Assistant Representative - Order Processing, can take and enter unsolicited orders, but cannot determine suitability or provide investment recommendations.
    - Series 24: General Securities Principal, authorized to supervise all sales personnel.
    - Series 52: Municipal Securities Representative, may sell only municipal and government securities.
    - Series 62: Corporate Securities Limited Representative, may sell only corporate obligations.
- Where the bank sells securities pursuant to an exception from broker dealer registration, bank securities representatives must receive training which is the substantive equivalent of NASD licensing requirements required for personnel qualified to sell securities as registered representatives.
- Where the bank sells securities through a third party networking arrangement, sales representatives (dual employees and third party employees) must be NASD licensed and registered.

Assess the bank's securities sales training materials to determine that bank staff is trained on the requirements for

referral and sales activities, including any appropriate and inappropriate customer referral activities.

Monitoring

Determine that the bank conducts independent compliance reviews (independent of security product sales and management review staff and their monitoring activities) of its retail securities sales program and that of any third party.

Verify that the findings of the independent reviews are periodically reported directly to the bank's board of directors, or committee of the board.

Determine that the bank reviews customer complaints to identify compliance issues, in particular, patterns of inadequate disclosure and/or unsuitable securities recommendations and sales.

For banks that hold government securities as a custodian or in safekeeping for the account of a customer, also:

- Determine that the bank conducts counts or verifications of government securities held for customers by the bank or by other institutions at least annually, reconciles them with account records, and documents findings within seven days.

Recordkeeping

If the bank conducts the securities transaction, determine that securities sales records containing all required information are properly maintained by the bank.

For banks that hold government securities as a custodian or in safekeeping for the account of a customer:

- Verify that customer government securities records are properly maintained and kept separate from other records of the bank.

Audit Function Evaluation

Determine that the bank's audit program includes its retail securities sales program, including third party activities, and assess the audit program's effectiveness.

Decision Factors

After completing the assessment of the compliance management system, examiners should document their conclusions as to whether risks in the securities sales program area are adequately managed by the institution, as well as their responses to each of the following Decision Factors:

1. Do the board of directors and senior management provide effective oversight of the retail securities sales program?
2. Are policies, procedures, information systems, training, and licensing adequate for such sales activities?
3. Does the institution adequately monitor customer referral and securities sales activities?
4. Does the audit function include the securities sales program, and is it adequate?

Based on the examiner's conclusions and responses to the above questions, examiners should determine the extent of transaction testing necessary to complete the compliance examination. If transaction testing is deemed appropriate, examiners should pull a sample of accounts and/or files and use the Expanded Analysis procedures and Job Aids below.

Expanded Analysis

The examination procedures in this section should be used when examiners identify material weaknesses in the bank's compliance management system that require further review to complete their assessment and to determine the bank's compliance with applicable laws, regulations, and the Interagency Statement. The entire set of expanded procedures should not be applied automatically. Examiners should implement only those expanded procedures that address specific areas of significant risk, weakness, or supervisory concern.

Disclosures, Notices, Confirmations, and Advertisements

Sample customer account files to review disclosures and written acknowledgments, including those incorporated into credit applications; investment sales confirmations; and investment account statements.

Review all advertising and promotional materials, including the text of prepared scripts (telemarketing and platform).

Personnel Qualifications

Sample sales representative personnel files to determine that they have the appropriate licenses and training, and to review their regulatory histories.

Sales Setting

Determine that the retail securities sales setting is physically distinct from the retail deposit area (visit additional sales locations when practical).

In those instances where there is limited space in the bank, determine that signage and other techniques are used to clearly distinguish the retail securities sales setting from the retail deposit area to avoid the potential for customer confusion.

Suitability

Sample customer account files to determine that retail securities sales staff obtain and evaluate information detailing each customer's investment goals, financial condition, and other factors before offering investment recommendations.

Sample customer account files to determine that:

- Customers sign appropriate disclosure forms;
- Customer data has been updated periodically;
- Securities sales staff provide complete information to customers regarding potential risks; and
- Recommendations conform to customer goals.

Analyze management and sales reports and promotions to:

- Evaluate sales activity for questionable practices, such as account churning.
- Determine if promotions have prompted unsuitable recommendation practices. For example, high volumes of volatile instruments or dramatic increases in a particular product's sales may indicate suitability concerns.

For unsolicited investment transactions (customers direct investment sales representatives to initiate transactions that were not recommended or suggested by any individual connected with the securities sales program) and discount brokerage operations (executes transactions directed by customer and maintains customer accounts, but does not provide investment advice):

- Verify that customers receive at least the minimum required disclosures; and
- Verify that securities sales staff retains documentation (preferably signed by the customer) which shows that the transaction was initiated solely at the customers' request.

Compensation

Review management reports, sales reports, and a sample of employee securities sales compensation records to:

- Verify that customer referral fees are paid as a one-time nominal fee of a fixed dollar amount for each referral, and that the referral fee is paid regardless of whether the referral results in a transaction.
- Determine that incentive compensation for bank employees authorized to sell securities products is not structured in such a way as to result in unsuitable recommendations or sales being made to customers.

Monitoring

Determine that the independent compliance review report findings are presented to the bank's board of directors.

Sample customer account files and evaluate the effectiveness of the bank's independent compliance review at identifying and eliminating documentation deficiencies.

Determine that the independent compliance review tracks all customer complaints.

Sales Practices

Review sales records to ensure that only specifically designated, authorized, and qualified personnel sell investments.

Custodial Holdings of Government Securities

For hold-in-custody repurchase agreements involving government securities:

- Review the repurchase agreements to ensure that they contain required disclosures pertaining to FDIC insurance and securities substitution, as necessary.
- Sample customer account files and verify that confirmations are delivered to appropriate individuals in the required format within the appropriate timeframe, and that they contain all required information.

For custodial or safekeeping of government securities:

- Review custodian bank's accounts and records to verify that customer government securities are:
  - Properly segregated from the assets of the bank, custodian institution, and/or broker-dealer, as appropriate, and
  - Kept free from any lien, charge, or claim.
- Sample customer account files and verify that confirmations are delivered to appropriate individuals in the required format and that they contain all required information.
- Determine that the annual counts of government securities held for customers, as conducted by the bank, are reconciled with customer account records and custodian accounts, and properly verified and documented.
- Determine that the bank's records contain all required information about each customer and each government security held in custody or safekeeping.

Proprietary Products

Sample customer account files and verify that proper disclosures are included.

NOTE: Where information is discovered which raises concern that a bank's sale of proprietary products raises safety and soundness concerns, such as risk to liquidity or capital adequacy, compliance examiners should promptly refer the information to the appropriate DSC Regional Office staff.

IRA and KEOGH Accounts

Where the bank offers self-directed IRA or Keogh accounts, the Interagency Statement generally applies,[17] except with respect to the suitability guidelines.[18] In addition, the following management and internal controls apply. Examiners should verify that:

- Asset and Accounting Controls
  - Customer assets are segregated from bank assets and from other account assets;
  - Accounting records reflect segregation of accounts; and
  - Accounting controls facilitate proper income reporting, record asset types, and identify individual instruments.
- Documentation
  - Documentation clearly identifies and supports each account.

    NOTE: IRA documentation should include, at a minimum, the required IRS trust/custodian agreement (Form 5305, 5305A, or equivalent), consumer disclosure agreement, signature card(s), and beneficiary designation.
- Illegal Investments
  - Illegal investments are not permitted, regardless of any contrary customer instructions.
  - IRA funds are not used for certain insider transactions, including:
    - Loans to the account sponsor or beneficiaries.
    - Collateral for loans to the account sponsor or beneficiaries.
    - Purchasing assets from the account sponsor, beneficiaries, or custodian bank.
    - Selling assets to the account sponsor, beneficiaries, or custodian bank.
    - Investments in debt instruments of the custodian bank or its holding company.
    - Investments in equity securities of the custodian bank or its holding company, unless acquired from an independent third-party at fair market value.
- Broker Selection
  - Broker selection is based upon two principles:
    - Management selects the best broker for the account.
    - Brokers are selected based solely on the combination of lowest possible commission and best possible order execution.

      NOTE: Management may not select a broker based on insider relationships, personal relationships, compensation of any type, or solely due to community ties (SEC Rule 28(e)).
- Bank Brokerage
  - The bank uses its own brokerage operations only when:
    - Management satisfies securities laws relative to broker selection.
    - The customer receives full written disclosure (pursuant to FDIC General Counsel's Opinion Number Six) of the bank's or affiliate's relationship to the broker and all compensation that the bank will earn.
    - The account agreement expressly authorizes the specific activity.
    - The bank complies with Employee Retirement Income Security Act (ERISA) and Internal Revenue Code provisions stipulating that the bank must either charge no fees, or only charge fees that recover direct costs.
    - The bank automatically uses its brokerage for all transactions unless requested to do otherwise, but provides 30-day advance notice to accounts of all fee increases and permits accounts to immediately cease using the bank's brokerage without penalty.

Documenting the Examination

Findings should be documented in the workpapers and incorporated in the report of examination as appropriate. In addition, record the information about the review and analysis of retail investment sales activities in SOURCE under the tabbed section labeled "NDP Sales."

When a bank does not adhere to the Interagency Statement, these findings must be recorded in SOURCE under the "NDP Sales" tab, "7: Inv Findings" sub-tab. Examiners should also ensure that a violation code for each violation of FDIC Part 344 or the Treasury Regulations 403.5(d) and 450 is recorded in the system.

References

Statutes

Gramm-Leach-Bliley Act
Title II – Functional Regulation
15 USC 78c
fdic01.prod.fdic.gov/division/dsc/cra/glba/

17 The Interagency Statement does not apply to self-directed IRAs that are invested entirely in insured deposits or that are part of a formal trust agreement (trustee accounts).

18 Because self-directed accounts permit account holders to select their own investments, no investment recommendations should be solicited and no suitability issues should arise. However, an account is not truly self-directed if the bank offers investment advice to the customer.

Government Securities Act of 1986
Title I, Subchapter A – Regulations Under Section 15C of the Securities Exchange Act of 1934
Title II, Subchapter B – Regulations Under Title II of the Government Securities Act of 1986
15 USC 78o-5(b)(1)(A), (b)(2), (b)(3)(B)
31 USC 3121, 911;

FDIC Regulation

FDIC Part 344 – Recordkeeping and Confirmation Requirements for Securities Transactions
12 CFR 344
www.fdic.gov/regulations/laws/rules/2000-6400.html#2000part344

Treasury Regulations

Treasury Regulations Part 403.5(d) – Protection of Customer Securities and Balances; Custody of Securities Held by Financial Institutions that are Government Securities Brokers and Dealers
17 CFR 403.5(d)
www.fdic.gov/regulations/laws/rules/8000-900.html#8000dot403.5

Treasury Regulations Part 450 – Custodial Holdings of Government Securities by Depository Institutions
17 CFR 450
www.fdic.gov/regulations/laws/rules/8000-1000.html#8000dot450

Department of Treasury Staff Interpretations of Government Securities Regulations
www.publicdebt.treas.gov/gsr/gsrsecrg.htm#interpretations
www.fdic.gov/regulations/laws/rules/8000-1100.html#8000dt-1

Interagency Policy

The Interagency Statement on Retail Sales of Nondeposit Investment Products, February 15, 1994; and the Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
www.fdic.gov/regulations/laws/rules/5000-4500.html

Financial Institution Letters

FIL 38-2002: Credit Risks Arising From Bank Investment Securities and Custodial Accounts Held at Securities Broker-Dealers
www.fdic.gov/news/news/financial/2002/fil0238.html

FIL 80-98: Nondeposit Investment Products and Recordkeeping Requirements Questions and Answers
www.fdic.gov/news/news/financial/1998/fil9880.html

FIL 22-98: FDIC Adopts FFIEC's Modified Policy Statement on Repurchase Agreements
www.fdic.gov/news/news/financial/1998/fil9822.html

FIL 107-96: Rescission of the FDIC Statement of Policy on Retail Repurchase Agreements
www.fdic.gov/news/news/inactivefinancial/1996/fil96107.html

FIL 66-95: Overnight Hold-In-Custody Repurchase Transactions
www.fdic.gov/news/news/financial/1995/fil9566.html

FIL 9-94: Interagency Statement on the Retail Sales of Nondeposit Investment Products

Regional Director Memoranda

DCA RD Memo 01-005: Insurance and Nondeposit Investment Products: Transfer of Supervisory Responsibilites from DOS to DCA
Provides additional guidance about information sharing with NASD, including a copy of the agreement between the banking agencies and the NASD.
http://fdic01/division/dsc/memos/memos/direct/64009601.pdf

FDIC Legal Advisory Opinions

Advisory Opinion 83-21: Insured Nonmember Bank May Participate in Investment Services Program Without Violating the Glass-Steagall Act
www.fdic.gov/regulations/laws/rules/4000-300.html

Advisory Opinion 86-34: Plan to Make Mutual Funds Available to Bank's Customers

Advisory Opinion 86-36: Sale of Securities and Mutual Funds on Bank Premises

Advisory Opinion 87-13: Brokerage Services on Premises of State-Chartered Banks

Advisory Opinion 88-42: Disclosure Requirements for Bank Securities Activities

Advisory Opinion 88-43: Unrelated Third Party Non-Banking Activities on Insured Nonmember Bank Premises

Advisory Opinion 89-2: Insured Nonmember Bank Participation in Investment Securities Program

Advisory Opinion 92-48: Insured Nonmember Bank May Participate in Brokerage Networking Program Without Violating Glass-Steagall Act

Advisory Opinion 92-55: Applicability of 12 CFR Part 344 to Brokerage Networking Program

Advisory Opinion 92-57: Explanation of 12 CFR Part 344 (Recordkeeping and Confirmation Requirements for Securities Transactions)

Advisory Opinion 92-74: Whether Bank May Act as Agent for Sale of Fixed Rate Annuities and Permit Sale of Mutual Funds on Its Premises Through "Dual Employees" and Registered Broker-Dealer, October 29, 1992

Advisory Opinion 94-30: Application of §344.4(a)(2) Which Establishes Recordkeeping and Confirmation Requirements for Securities Transactions

Advisory Opinion 94-33: Guidance Concerning the Retail Sale of Mutual Funds and Other Non-Deposit Investment Products Through a Securities Brokerage Service

Advisory Opinion 94-53: Application of Section 344.4: Sale of Securities Through Banks

Advisory Opinion 95-18: Custodial Holdings of Government Securities Held for Customers by Depository Banks

Advisory Opinion 95-37: Whether Post-Trade Confirmation and Matching Messages Transmitted Through an Electronic Trade Confirmation System Meet the Requirements of FDIC Part 344

Advisory Opinion 96-1: Interpretation of the Department of Treasury Regulations Implementing the Government Securities Act

Advisory Opinion 00-2: Would Certain Sweep Accounts Violate the Federal Deposit Insurance Act

Job Aids

Job Aid for Review and Analysis of Common Retail Investment Sales Activities		
Common Transaction:		***Applicable policy and/or regulation:***
A third party *(employed solely by the third party)* that is registered with the Securities and Exchange Commission (SEC) as a broker/dealer sells or recommends investments to bank customers on bank premises, or through bank customer referrals when the bank receives a benefit for the referral.		Interagency Statement on the Retail Sales of Nondeposit Investment Products FDIC Part 344, *except* when the broker/dealer is fully disclosed to the customer and the customer has a direct contractual agreement with the broker/dealer
A third party (*employed dually by the bank and the third party*) that is registered with the SEC as a broker/dealer sells or recommends investments to bank customers on bank premises, or through bank customer referrals when the bank receives a benefit for the referral.		Interagency Statement on the Retail Sales of Nondeposit Investment Products FDIC Part 344, *except* when the broker/dealer is fully disclosed to the customer and the customer has a direct contractual agreement with the broker/dealer
A bank establishes a cash management sweep account for its customer, with fund transfers pursuant to a hold-in-custody repurchase agreement involving government securities.		Interagency Statement on the Retail Sales of Nondeposit Investment Products Treasury Regulation Part 403.5(d) Treasury Regulation Part 450 FDIC Part 344, *except* as provided in Part 344.2(a)(2), Part 344.7(a), and Part 344.9(b)
A bank establishes a cash management sweep account for its customer that transfers funds from a deposit account to purchase securities, and also initiates securities sales or redemptions to replenish a deposit account.		Interagency Statement on the Retail Sales of Nondeposit Investment Products FDIC Part 344, *except* as provided in Part 344.2, Part 344.7(a), and Part 344.9(b)
A bank holds government securities as a custodian or in safekeeping for the account of a customer.		Treasury Regulation 450

Job Aid for 12 CFR §344 Recordkeeping and Confirmation Requirements for Securities Transactions

Negative answers to the following questions indicate violations of FDIC regulations published at Part 344. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Securities Trading Policies and Procedures			
1. Does the bank have written policies and procedures providing for assignment of responsibility for supervision of all officers and employees who transmit orders to or place orders with broker/dealers; or execute transactions in securities for customers?	344.8(a)(1)		
2. Does the bank have written policies and procedures providing for assignment of responsibility for supervision and reporting (separate from those in 344.8(a)(1)), for all officers or employees who process orders for notification and settlement purposes, or perform back office functions?	344.8(a)(2)		
3. Does the bank have written policies and procedures providing for the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time?	344.8(a)(3)		
4. Does the bank have written policies and procedures providing for, where permissible under local law, the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction?	344.8(a)(4)		
Reporting of Personal Securities Trading			
5. Do bank officers and employees (subject to exceptions under 344, which exempt dual employees of the bank and broker/dealer when acting as an employee of, and subject to the supervision of, the registered broker/dealer) who make investment recommendations or decisions for the accounts of customers; participate in the determination of such recommendations or decisions; or in connection with their duties obtain information concerning which securities are being purchased or sold or recommended such action, report to the bank within 10 business days after the end of the calendar quarter all transactions in securities made by them or on their behalf in which they have a beneficial interest?	344.9(a)		
Written Notification			
6. Does the bank provide to the customer at or before completion of each securities transaction either a broker/dealer's confirmation or a written notification as required by the regulation?	344.5		
Notification by Agreement			
7. For accounts where the bank *does not* exercise investment discretion and provides an alternative written notification, does the bank maintain a written agreement with the customer pertaining to the different arrangement (timing and content) for the written notification to the customer; and does the agreement make clear the customer's right to receive the written notification described in 344.5 at no additional cost?	344.6(a)		

Job Aid for 12 CFR §344 Recordkeeping and Confirmation Requirements for Securities Transactions (cont.)

Negative answers to the following questions indicate violations of FDIC regulations published at Part 344. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Alternative Forms and Times of Notification			
8. For accounts where the bank exercises investment discretion in an agency capacity:	344.6(c)(1)		
(a) Does the bank provide the customer, not less frequently than once every three months, an itemized statement that specifies the funds and securities in custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period?	344.6(c)(2)		
(b) If requested by the customer, does the bank provide the customer with the written notification described in 344.5 within a reasonable period of time?	344.6(d)		
9. For securities transactions involving cash management sweep accounts, does the bank send their customer a written statement, in the form required by 344.6(f) for each month in which a purchase or sale of a security takes place in such accounts, and not less than once every three months if no securities transactions occur? (For sweep accounts where banks retain custody of government securities that are the subject of a hold-in-custody repurchase agreement with the customer, the bank is also subject to Treasury Regulation confirmation requirements – *see* Compliance Checklist for 17 CFR 403.5(d).)	344.6(e)		
10. For collective investment fund accounts, does the bank provide the customer with a copy of a financial report of the fund as described in this section, or a notice that a copy of such a report is available upon request?			
11. For periodic plan accounts:			
(a) Does the bank provide the customer a written statement, not less than once every three months, showing the funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction?	344.6(f)		
(b) If requested by the customer, does the bank provide the customer with the written notification described in 344.5?			
Settlement of Securities Transactions			
12. Does the bank settle securities transactions (other than those securities listed in 344.7(a)) no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the contract, or unless the contract is subject to an exception listed in 344.7(b) and (c)?	344.7		

Job Aid for 12 CFR §344 Recordkeeping and Confirmation Requirements for Securities Transactions (cont.)

Negative answers to the following questions indicate violations of FDIC regulations published at Part 344. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Recordkeeping			
13. Does the bank maintain required records for at least three years, including:	344.4(a)		
(a) Daily records for each purchase and sale of securities, in chronological order;			
(b) Account records for each customer;			
(c) Order tickets for each order to purchase or sell securities (whether executed or canceled);			
(d) Record of all broker/dealers selected by the bank to effect transactions and the amount of commissions paid or allocated to each broker during the calendar year; and			
(e) Copies of written notifications provided to customers under the regulation?			

Comments:

Job Aid for 17 CFR §403.5(d) Protection of Customer Securities and Balances

Negative answers to the following questions indicate violations of Treasury regulations published at 17 CFR §403.5(d). Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Repurchase Agreement			
1. For government securities subject to hold-in-custody repurchase agreements between the bank and the customer:	403.5(d)(1)		
(a) Are written repurchase agreements obtained by the bank?			
(b) Does the repurchase agreement disclose that funds held pursuant to the repurchase agreement are not deposits nor insured by the FDIC?			
(c) If applicable, is the provision by which the bank retains the right to substitute securities included in the written repurchase agreement?			
(d) If applicable, is the "Required Disclosure" regarding substitution properly displayed in the repurchase agreement?			
Written Confirmation			
2. Does the bank confirm in writing the specific government securities subject to the repurchase transaction at end of day of initiation of the transaction, and at end of any day when securities are substituted resulting in a change to issuer, maturity date, par amount or coupon rate specified in the previous confirmation?	403.5(d)(1)(ii)		
3. Does the confirmation specify: issuer, maturity date, coupon rate, par amount, market value, and, if applicable, CUSIP or mortgage-backed security pool number?	403.5(d)(2)(i)		
4. If confirmations are not sent to non-U.S. citizens residing outside the United States, does the bank have a written waiver from the customer?	403.5(d)(2)(ii)		
Custodial Holdings of Government Securities			
5. Does the bank maintain proper possession and control of the government securities that are the subject of the repurchase agreement, except when substituting securities? (*see* Compliance Checklist for 17 CFR 450 for custodial requirements)	403.5(d)(vi) 450.4(a)		

Comments:

Job Aid for 17 CFR §450 Custodial Holdings of Government Securitires by Depository Institutions

Negative answers to the following questions indicate violations of Treasury regulations published at 17 CFR §450. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Segregation of Government Securities			
1. For banks holding government securities for its customer accounts:			
(a) Are all government securities held for the account of customers (including securities of counterparties to hold-in-custody repurchase transactions) segregated from the assets of the bank and kept free from lien, charge, or claim of any third party granted or created by the bank?	450.4(a)(1)		
(b) If customer government securities are maintained by the bank at another institution ("custodian institution"), including a depository institution, correspondent bank, or a trust company:	450.4(a)(2)(i)		
(1) Has the bank notified the custodian institution that the securities belong to the customers and should be maintained in a separate, designated customer account?			
(2) Does the custodian bank maintain customer securities in an account designated for customers, and which does not contain any proprietary securities of the bank?			
(3) Has the bank instructed the custodian institution to keep such customer securities free of any lien, charge, or claim?			
(c) For customer government securities maintained by the bank at a Federal Reserve Bank, do any liens, charges, or claims against securities of the bank expressly exclude customer securities?	450.4(a)(3)(i)		
(d) If customer government securities are subject to a securities lending arrangement, agreed to in writing by the customer, is such loan of securities carried out in full compliance with FFIEC Policy Statement on Securities Lending?	450.4(a)(6)		
2. For banks holding government securities as a custodian for other institutions:			
(a) If the bank holds government securities that have been identified as customer securities by another depository institution:			
(1) Does the bank maintain these securities in a separate, designated account for customers of the depository institution?	450.4(a)(2)(i)(B)		
(2) Does the bank keep identified customer securities separate from other securities held for the other institution?	450.4(a)(2)(ii)		

Job Aid for 17 CFR §450 Custodial Holdings of Government Securitires by Depository Institutions (cont.)

Negative answers to the following questions indicate violations of Treasury regulations published at 17 CFR §450. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
(b) If the bank holds government securities that have been identified as customer securities by a government securities broker or dealer, or that the broker or dealer has instructed the bank to place in a "segregated account":			
(1) Does the bank keep such securities separate from other securities of the broker or dealer and in compliance with the other provisions of this section? (Banks are not required to keep records identifying individual customers of the government securities broker or dealer.)	450.4(a)(4)		
(2) If the bank is a clearing bank and does not transfer securities to a segregated account as instructed by the broker or dealer because of the need for collateral for an extension of clearing credit to such dealer, has it notified the broker or dealer's regulatory agency and segregated such securities as soon as no longer required by the bank as collateral for the clearing credit?			
Written Confirmation			
3. Does the bank issue a confirmation or safekeeping receipt identifying the issuer, maturity date, par amount, and coupon rate for each security held for a customer? (This provision does not apply to confirmations issued for hold-in-custody repurchase agreement transactions – *see* Compliance Checklist for 17 CFR 403.5(d) for confirmation requirements)	450.4(b)		
4. If the bank does not send confirmations to non-U.S. citizens residing outside the United States, does the bank have a written waiver from the customer to support this?			
Counts of Government Securities			
5. Are counts or verifications of government securities held for customers by the bank or by other institutions conducted annually, and are these counts reconciled with customer account records and with custodian accounts held for customers?	450.4(d)		
6. Are securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements, or subject to bank's control but not in its possession verified after thirty days in such status?	450.4(d)(2)		
7. Are the required counts and reconcilements, along with any differences, documented within seven days?	450.4(d)(3)		

Job Aid for 17 CFR §450 Custodial Holdings of Government Securitires by Depository Institutions (cont.)

Negative answers to the following questions indicate violations of Treasury regulations published at 17 CFR §450. Questions that are not applicable should be answered "N/A" in the "YES" column.

Item	Section No.	Yes	No
Recordkeeping			
8. Are customer government securities records maintained and kept separate from other records of the bank?	450.4(e)		
9. Do the records contain the following:			
(a) Identification of each customer and each government security held for the customer? (Amount of each issue of a security is adequate for book-entry form.)			
(b) Customer's interest in each security?			
(c) Record of all receipts and deliveries of securities, and all related receipts and disbursement of cash made by the bank?			
(d) Copy of confirmation or safekeeping receipt for each security held?			
(e) Information adequate to conduct an audit?			
10. Are customer records and counts of securities preserved for six years?	450.4(f)		

Comments:

Retail Insurance Sales[1]

Introduction

The following supervisory information and examination procedures apply to retail sales, solicitation, advertising, or offers of any insurance product or annuity[2] to a consumer[3] by a bank or any person engaged in such activities at an office of the bank or on behalf of the bank. These materials do not apply to sales of insurance or annuities that occur as part of a bank's trust or fiduciary activities.

Insurance products are not FDIC-insured and may involve investment risk. Consequently, examiners must assess the quality of an institution's compliance management system (CMS) as it pertains to the retail sale of insurance and annuities. Examiners must consider whether the CMS appropriately manages the risks involved in these activities, including whether the CMS produces compliance with Part 343 of the FDIC's regulations (Consumer Protection in Sales of Insurance) and adherence to the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products (the Interagency Policy Statement)[4] when variable annuities are sold.

Regulatory and Policy Requirements

The primary risks addressed by Part 343 and the Interagency Policy Statement are that consumers will:

- misunderstand the safety of insurance products sold by banks, i.e., assume incorrectly that they are backed by the FDIC or another federal agency, or
- be coerced into believing they must purchase an insurance product or annuity in order to obtain a loan.

FDIC Part 343

Pursuant to the Gramm-Leach-Bliley Act (GLBA), the federal banking agencies have adopted regulations concerning consumer protection in the sale of insurance by banks and thrifts. The regulations, which include the FDIC's Part 343, address matters that are the responsibility of the banking agencies to oversee and not the responsibility of state insurance departments.[5]

Part 343 applies to the bank as well as other parties that offer insurance or annuities on bank premises or on the bank's behalf. Under Part 343, a party offers these products on behalf of the bank when:

- it represents that it is doing so; or
- it pays the bank commissions for receiving customer referrals; or
- documents that evidence the sales transaction refer to the bank.

Interagency Policy Statement

The Interagency Policy Statement contains requirements that overlap with Part 343, particularly with respect to disclosures and the circumstances under which sales and recommendations may be made. To the extent that Part 343 addresses an area, it governs. However, because variable annuities have an investment component, banks that offer them must also adhere to the program requirements explained in the Interagency Policy Statement. In particular, a bank that offers annuities should establish policies and procedures for its sales program and offer variable annuities only when suitable for customers. A detailed explanation of the requirements of the Interagency Policy Statement is contained in the Investment Sales Procedures.

Examination Procedures

During the compliance examination of a bank that offers insurance products, examiners must consider these activities when assessing the quality of the bank's compliance management system (CMS). The specific guidance and procedures contained in this chapter should be used within the framework of the general compliance examination procedures and, specifically, during the pre-examination planning and review and analysis stages of the compliance examination.

Examiners must determine whether the CMS appropriately manages the risks involved in retail insurance sales activities, including adherence to FDIC Part 343, and the Interagency Policy Statement if variable annuities are sold. In doing so, examiners should consider all documentation related to retail insurance sales, including, but not limited to, agreements with third parties, sales activity volume and financial reports, standard disclosures and acknowledgment forms, records

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-038: Revised Compliance Examination Procedures and Supervisory Guidance.

2 The sale of variable annuities is supervised as both an insurance and an investment activity. Consequently, banks that offer these products should be examined under both these procedures and the Compliance Examination Procedures and Supervisory Guidance For Retail Investment Sales Activities (Investment Sales Procedures).

3 In this context, a consumer is an individual who purchases, applies to purchase or is solicited to purchase any type of insurance product to be used primarily for personal, family, or household purposes. *See* 12 CFR §343.20(d).

4 FDIC Statments of Policy, Law, Regulation and Related Acts.

5 The states continue to be responsible for insurance agent and company licensing, product oversight, rates and forms, and most market conduct regulation, regardless of whether a bank is involved. Moreover, where state law provides greater consumer protection in the sale of insurance than the protection provided by the federal rules, GLBA provides that state law governs. Decisions about which law or regulation provides greater protection are made on a case-by-case basis. The Legal Division should be consulted if such questions arise.

which document the qualifications of sales personnel, and proprietary product management reports.

Based on the examiner's conclusions about the bank's CMS, a determination should be made about the extent of transaction testing or file review necessary to complete the compliance examination. The severity of the CMS weaknesses and operational risk should dictate the intensity of transaction testing. The expanded analysis should be carefully tailored to weaknesses identified in the CMS as it relates to specific retail insurance sales activities, focusing on those areas of the bank's program that present the greatest degree of risk to the bank or to consumers.

At the conclusion of the examination, examiners should document their conclusions about the bank's retail insurance sales activities in the Risk Profile and Scoping Memorandum, examination work papers, and Report of Examination, as appropriate. Banks that fail to comply with applicable laws and regulations, or fail to establish and observe appropriate policies and procedures consistent with Part 343 or with the Interagency Policy Statement when applicable, should be subject to criticism in the Report of Examination and appropriate corrective action.

Pre-examination Planning

During the initial contact with the institution and through the Compliance Information and Document Request (CIDR):

- identify any insurance or annuities sales activities the institution conducts directly or through other entities on its behalf; and
- obtain copies of relevant policies and procedures, third party agreements, disclosures and acknowledgment forms, advertising copy, records and reports.

In addition, state insurance officials should be contacted to obtain copies of any complaint records involving the bank. Information sharing agreements are in place with most states, and a list of contacts is posted on the DSC website:[6] **http://fdic01/division/dsc/compliance/SalesInsurance.html**

Review and Analysis

Examiners should use the guidance below to evaluate the bank's CMS as it pertains to retail insurance sales activities to determine whether risks are adequately managed. After completing the review of the bank's CMS, examiners should document their conclusions about the retail insurance sales program area through written responses to the Decision Factors described on page IX-2.3. The written response should be retained in the examination workpapers. A Job Aid is provided at the end of these procedures which may be helpful in conducting the review.

Board and Senior Management Oversight Evaluation

Consider whether the bank's board of directors has adopted written policies and procedures for the bank's insurance sales program. If not, are they needed? Are the policies and procedures reviewed and updated as necessary?

Does the board of directors and senior management receive and review sufficient information to provide appropriate direction and control of insurance sales?

For retail insurance sales conducted through a networking arrangement with a third-party vendor, also consider whether:

- The bank conducted an appropriate review of the third party's qualifications, experience, regulatory history, financial condition, and references prior to entering into the arrangement;
- The arrangement is controlled by a written agreement that is approved by the bank's board of directors and contains the following elements:
  - Description of each party's duties and responsibilities;
  - Description of the permissible activities by the third party on bank premises;
  - Controls for the use of bank space, personnel, and equipment;
  - Detailed compensation arrangements for all bank and third party personnel;
  - Requirement that sales representatives are appropriately trained, licensed, and qualified;
  - Requirement that the third party comply with all applicable laws and regulations;
  - Authorization for the bank to monitor the activities of the third party and its sales representatives and to periodically review compliance with the agreement;
  - Authorization for the bank and its banking regulatory agency to have access to such records of the third party as are necessary or appropriate to evaluate compliance;
  - Indemnification for the bank for potential liability caused by the third party's sales activities; and
  - Written employment contracts satisfactory to the bank for personnel employed by both the bank and the third party; and
- Bank senior management periodically monitors the third party's compliance with the agreement.

6 *See* DSC RD Memo 01-005: Insurance and Nondeposit Investment Products: Transfer of Supervisory Responsibilities from DOS to DCA.

Compliance Program Evaluation

Policies, Procedures and Internal Controls

Consider whether the retail insurance sales program's policies and procedures include a description of the following elements:

- Types of products sold;
- Supervision of personnel involved in sales; and
- Compliance procedures to ensure sales activities are conducted in accordance with Part 343.

Review the policies and procedures, and through interviews and observation consider the practices of the bank in the following areas:

Sales Setting

Is the area in which insurance is sold physically distinct from the area in which retail deposits are taken?

- Employees do not make insurance recommendations, or take orders for insurance products, even if unsolicited, while located in the routine deposit-taking area. (This includes reviewing any prepared scripts on handling deposit customers, or customers whose certificates of deposit are maturing.)

Referrals

Employees who are not authorized and qualified to sell insurance only make referrals, and do not make insurance recommendations or take orders for insurance products. (This includes reviewing any prepared scripts on referring deposit customers, or customers whose certificates of deposit are maturing.)

- Management and staff (including tellers and receptionists) adhere to part 343 and the bank's insurance sales policy when making customer referrals.

Compensation

Compensation to bank employees for customer referrals is a one-time nominal fee of a fixed dollar amount for each referral, and that the compensation is paid regardless of whether the referral results in a transaction.

Sales Practices

Insurance sales practices, including advertising, would not lead consumers to believe that:

- extensions of credit are tied to the sale of insurance or annuities;
- insurance or annuities are backed by the federal government; or
- products that carry investment risk do not do so.

The bank prohibits insurance sales practices that discriminate against victims of domestic violence or providers of services to such victims.

Disclosures, Advertisements, and Acknowledgements

Standard disclosures and advertising contain at least the following minimum content required by Part 343:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE

Where insurance is offered in connection with a credit application, standard disclosures explain that credit cannot be conditioned on the purchase of insurance from the bank or the consumer's agreement not to purchase insurance elsewhere.

Disclosures are provided consistently with the manner and timing requirements of Part 343.

Disclosures are understandable and meaningful, as required by Part 343.

The bank obtains the customer acknowledgement of receipt of disclosures as required by Part 343.

Personnel Qualifications

Insurance sales employees and management are qualified (appropriate licensing, training, and/or experience) to conduct their authorized duties.

The bank's insurance sales training materials appropriately cover the requirements for referral and sales activities, including any appropriate and inappropriate customer referral activities.

Monitoring

Does the bank conduct monitoring of its retail insurance sales program and that of any third party? Does the monitoring include sales practices, the referral process, the manner and timing of disclosures, and customer acknowledgement of receiving disclosures?

Does the bank review customer complaints to identify compliance issues?

Audit Function Evaluation

Consider whether the bank's audit program includes its retail insurance sales program, including third party activities, and assess the audit program's effectiveness.

Decision Factors

After completing the assessment of the compliance management system, examiners should document their conclusions as to whether risks in the retail insurance sales program area are adequately managed by the institution, as well as their responses to each of the following Decision Factors:

1. Do the board of directors and senior management provide effective oversight of the retail insurance sales program?
2. Are policies, procedures, information systems, training, and licensing adequate for such sales activities?
3. Does the institution adequately monitor customer referral and insurance sales activities?
4. Does the audit function include the insurance sales program, and is it adequate?

Based on the conclusions and responses to the above questions, examiners should determine the extent of transaction testing or file review necessary to complete the compliance examination. If such review is deemed appropriate, examiners should pull a sample of accounts and/or files and use the Expanded Analysis procedures below.

Expanded Analysis

The examination procedures in this section should be used when examiners identify material weaknesses in the bank's compliance management system that require further review to complete their assessment and to determine the bank's compliance with part 343. The entire set of expanded procedures should not be applied automatically. Examiners should use only those expanded procedures that address specific areas of significant risk, weakness, or supervisory concern.

Disclosures, Notices, Acknowledgements, and Advertisements

Sample customer account files to review disclosures and written acknowledgments, including those incorporated into credit applications.

Review all advertising and promotional materials, including the text of prepared scripts (telemarketing and platform).

Personnel Qualifications

Sample sales representative personnel files to determine whether they have the appropriate licenses and training, and to review their regulatory histories.

Sales Setting

Determine that the retail insurance sales setting is physically distinct from the retail deposit area (visit additional sales locations when practical).

In those instances where there is limited space in the bank, determine that signage and other techniques are used to clearly distinguish the retail insurance sales setting from the retail deposit area to avoid the potential for customer confusion.

Compensation

Review management reports, sales reports, and a sample of employee insurance sales compensation records to verify that customer referral fees are paid as a one-time nominal fee of a fixed dollar amount for each referral, and that the referral fee is paid regardless of whether the referral results in a transaction.

Monitoring

Sample customer account files and evaluate the effectiveness of the bank's monitoring at identifying and eliminating documentation deficiencies.

Review customer complaints and consider whether the bank addressed them adequately and used them to detect potential compliance breakdowns.

Sales Practices

Review sales records to ensure that only licensed personnel sell insurance.

Documenting Examination Findings.

Findings should be documented in the workpapers and incorporated in the report of examination as appropriate. In addition, record the information about the review and analysis of bank insurance sales in SOURCE under the tabbed section labeled "NDP Sales."

References

12 CFR 343: Consumer Protection in Sales of Insurance
http://www.fdic.gov/regulations/laws/rules/2000-6300.html#2000part343

FIL 84-2000: Consumer Protection for Bank Sales of Insurance
Federal Register publication of insurance sales rule with preamble that contains useful interpretive information.
http://www.fdic.gov/news/news/financial/2000/fil0084.html

Interagency Statement on Retail Sales of Nondeposit Investment Products
http://www.fdic.gov/regulations/laws/rules/5000-4500.html#5000interagencysor

Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
http://www.fdic.gov/regulations/laws/rules/5000-4600.html#5000jointiot

Also released as FIL 61-95: Nondeposit Investment Activities
http://www.fdic.gov/news/news/financial/1995/fil9561.html

FIL 84-2001: Questions and Answers on Consumer Protections for Bank Sales of Insurance:
http://www.fdic.gov/news/news/financial/2001/fil0184.html

FDIC Legal Advisory Opinion 92-74: Whether Bank May Act as Agent for Sale of Fixed Rate Annuities and Permit Sale of Mutual Funds on Its Premises Through "Dual Employees" and Registered Broker-Dealer
Contains useful discussion of compensation.
http://www.fdic.gov/regulations/laws/rules/4000-7650.html

SOURCE contains a useful list of definitions, under the *View Defined Terms* button on the first page of the NDP sales folder.

Job Aids

Job Aid for Review of Retail Sales of Insurance and Annuities				
Policies and Procedures	**Yes**	**No**	**N/A**	**Comments**
1. Do the bank's policies and procedures prohibit sales practices which materially mislead consumers into believing that: • extensions of credit are tied to the sale of insurance or annuities; • insurance or annuities are backed by the federal government; or • products that carry investment risk do not do so? ***See* §343.30(a) and (b)**				
2. Do the bank's policies and procedures detail sales employee qualification, training, licensing and compensation practices? ***See* §343.60.**				
3. Do the bank's policies and procedures establish referral procedures for employees who are not authorized to sell insurance which include limits on referral compensation to a one-time, fixed dollar, nominal fee that is not tied to whether the referral results in a transaction? ***See* §343.50(b)**				
4. To the extent practical, do the bank's policies and procedures require that the area in which insurance is sold is physically distinct from the area in which retail deposits are taken? ***See* §343.50(a)**				
5. Do the bank's policies and procedures prohibit discrimination against victims of domestic violence or providers of services to such victims? ***See* §343.30 (c)**				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Disclosures	**Yes**	**No**	**N/A**	**Comments**
6. Are disclosures readily understandable and meaningful? ***See* §343.40(c)(5)& (6);**				
7. Are written customer acknowledgment forms available for all insurance product disclosures, including those which must be provided when credit applications are taken? ***See* §343.40(c)(7);**				
8. Do disclosures contain at least the minimum required content? "Minimum required content" means that: • Except to the extent that it is not accurate, disclosures inform customers that **insurance and annuities** are: • *not* deposits or obligations of the bank or its affiliates; ***See* §343.40(a)(1)** • *not* guaranteed by the bank or its affiliates; ***See* §343.40(a)(1)** • *not* insured by the FDIC; ***See* §343.40(a)(2)** • *not* insured by or any other agency of the United States or any affiliate of the bank; ***See* §343.40(a)(2)** and • are subject to investment risk, including potential loss of principal. ***See* §343.40(a)(3)**				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Disclosures (cont.)	**Yes**	**No**	**N/A**	**Comments**
9. Where **insurance** is solicited, offered, or sold in connection with a **credit application**, do disclosures state that the bank may not condition the extension of credit on either: • the consumer's purchase of an insurance product or annuity from the bank or any of its affiliates ***See* §343.40(b)(1);** or • the consumer's agreement not to obtain, or a prohibition on obtaining, an insurance product or annuity from an unaffiliated entity? ***See* §343.40(b)(2)**				
Advertising and Promotional Materials	**Yes**	**No**	**N/A**	**Comments**
10. Are they readily understandable and meaningful? ***See* §343.40(c)(5)and (6);**				
11. Do they contain at least the minimum required disclosures, unless they are not accurate for a particular product? The minimum disclosures explains that the product is • NOT A DEPOSIT • NOT FDIC-INSURED • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • NOT GUARANTEED BY THE BANK • MAY GO DOWN IN VALUE ***See* §343.40(c)(5)**				
Training	**Yes**	**No**	**N/A**	**Comments**
12. Does the bank's training program cover insurance sales? Does it offer appropriate training to all employees and management? ***See* §343.60**				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Monitoring	**Yes**	**No**	**N/A**	**Comments**
Sales Practices 13. Does the bank ensure that sales representatives do not engage in misleading or coercive sales practices? ***See* §343.30.** 14. Does the bank ensure that tellers or other employees who are not authorized or qualified to sell insurance do not make sales recommendations or take orders for such products? ***See* §343.60**				
Manner and Timing of Disclosures 15. Does the bank ensure that disclosures are made in an appropriate and timely way? Does the bank's monitoring system ensure that: • disclosures are provided orally and in writing before an initial sale is completed, ***See* §343.40(c)(1),** • disclosures are provided in advertisements, unless general in nature, ***See* §343.40(d)** • where insurance is solicited, offered, or sold in connection with a credit application, disclosures are provided orally and in writing when the credit application is taken. ***See* §343.40(c)(1)**				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Monitoring (cont.)	**Yes**	**No**	**N/A**	**Comments**
16. Does the bank's monitoring system consider that: • For insurance transactions completed by mail or through electronic media, oral disclosures are not required. ***See* §343.40(c)(2) and (4)(iii);** • For insurance transactions completed by telephone, written disclosures may be provided by mail within three business days after the sale is completed or the credit application is taken. ***See* §343.40(c)(3)** • For insurance transactions completed electronically, written disclosures may be provided electronically, if the consumer affirmatively consents and the disclosures are provided in a format that the consumer may retain or obtain later. ***See* §343.40(c)(4).**				
Customer Acknowledgment of Receipt of Disclosures 17. Does the bank's monitoring system ensure that a written customer acknowledgement of receipt of all insurance disclosures, including those which must be provided when credit applications are taken, is obtained: • either when such disclosures are given or before an initial sale is completed. ***See* §343.40(c)(7)** • Except that oral acknowledgements are sufficient for telephone transactions, as long as the bank maintains documentation which shows that acknowledgements have been received and makes reasonable attempts to obtain written acknowledgements from consumers. ***See* §343.40(c)(7)(I) and (ii).**				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Employee Qualifications	**Yes**	**No**	**N/A**	**Comments**
18. *Do hiring practices* for insurance sales personnel include consideration of applicants' qualifications and experience? Does the bank ensure that: • Insurance sales personnel are appropriately licensed under applicable state insurance licensing standards. ***See* §343.60.** • Agents possess current licenses for particular products offered. ***See* §343.60.**				
• For agencies with multi-state operations, agents possess current licenses for all states in which the agency operates. ***See* §343.60.**				
• Bank employees who sell variable insurance products must be properly licensed and trained to sell both insurance and securities because these products are treated as securities for the purpose of securities brokerage activities under thhe Securities Exchange Act of 1934. ***See* §343.60.**				
19. Does the bank maintain a *system to periodically confirm* that employees remain in good professional standing and are not subject to disciplinary or enforcement action by any state insurance commissioner, or any state or federal regulatory agency?				
Audit Program	**Yes**	**No**	**N/A**	**Comments**
20. Does the bank have an audit program that includes insurance sales? Is it sufficient given the volume and complexity of the bank's products, as well as the bank's monitoring program?				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Complaint Resolution and Monitoring	**Yes**	**No**	**N/A**	**Comments**
21. Does the bank have a complaint resolution and monitoring program? Is it sufficient? Is it being used as an early warning system to detect potential breakdowns in compliance?				
Management Oversight	**Yes**	**No**	**N/A**	**Comments**
22. Does the bank responsibly manage the insurance and annuity sales compliance process?				

X. Other Compliance Issues

Contents

Advertisement of Membership—Part 328 of FDIC Rules and Regulations **X–1.1**
Introduction X–1.1
Examination Objective X–1.1
Examination Procedures X–1.1
References X–1.1
Section 42 of the Federal Deposit Insurance (FDI) Act—Branch Closings **X-2.1**
Introduction X-2.1
Statuatory Overview X-2.1
Examination Objectives X-2.1
Examination Procedures X-2.1
References X-2.1
The Electronic Signatures in Global and National Commerce Act (E-Sign Act) **X-3.1**
Introduction X-3.1
Summary of Major Provisions X-3.1
Definitions X-3.2
Examination Procedures X-3.2
References X–3
Prohibition Against Use of Interstate Branches Primarily for Deposit Production **X-4.1**
Introduction X-4.1
Definitions X-4.1
The Two Step Test X-4.1
Examination Objective X-4.2
Examination Procedures X-4.2
Examples of Covered Interstate Branches X-4.6
References X-4.7
Job Aids X-4.7

(This page intentionally left blank.)

Advertisement of Membership—Part 328 of FDIC Rules and Regulations

Introduction

These examination procedures were developed to assist examiners in the review of advertisements and signs for compliance with Part 328 of the FDIC Rules and Regulations.

The regulation contained in this part describes the official signs of the FDIC and prescribes their use by insured depository institutions. It also prescribes the official advertising statement insured banks must include in their advertisements. Insured banks which maintain offices that are not insured in foreign countries are not required to include the advertising statement in advertisements published in foreign countries. For purposes of this Part 328, the term "insured bank" includes a foreign bank having an insured branch.

Examination Objective

The objective of the examination is to:

- Determine whether public advertisements and signs comply with applicable regulatory requirements.

Examination Procedures

1. Determine that the required official (FDIC) sign is displayed at each station or window where deposits are received. (§328)

   NOTE: Display of the official sign at automated teller machines (ATMs) is not required.

   NOTE: If required posters, signs, etc., are missing or obsolete, inform management of the availability of these items from the FDIC Warehouse upon request and may be obtained by faxing a written request on bank letterhead to:

   FAX: (703) 516-5201

   Or via FDIC*connect* at:

   https://www2.fdicconnect.gov

   Requests should indicate the number of each requested item needed and the name and address of the financial institution.

2. If the financial institution has on-premises investment services or offers municipal securities or retail repurchase agreements (uninsured investment services and products), determine that promotional materials, including lobby signs and brochures, do not mislead consumers as to the product's insured status.

3. Determine if the official advertisement statement "Member FDIC" is properly included in print and broadcast (television, radio) advertisements. (§328.3)

   NOTE: Section 328.3(c) lists the types of advertisements that do not require the "Member FDIC" disclosure.

4. If the official advertisement statement "Member FDIC" is in a language other than English, determine whether prior written approval of the translation was obtained from the FDIC. (§328.3(e))

References

FDIC Rules and Regulation Part 328; Advertisement of Membership
http://www.fdic.gov/regulations/laws/rules/2000-5200.html

Interagency Statement on Retail Sales of Nondeposit Investment Products
http://www.fdic.gov/regulations/laws/rules/5000-4500.html

FDIC Legal Advisory Opinions

Advisory Opinion 89-24: Advertisement of FDIC Insurance by Savings Associations
http://www.fdic.gov/regulations/laws/rules/4000-5980.html#400089-24

Advisory Opinion 93-2: Advertisements Soliciting Deposits and Non-Deposit Obligations Should Clearly State Which Investments Are Insured
http://www.fdic.gov/regulations/laws/rules/4000-7910.html#400093-2

Advisory Opinion 00-10: Whether the Rules Regarding the Use of the FDIC Logo Apply to Insured Institution Web Sites
http://www.fdic.gov/regulations/laws/rules/4000-10120.html#400000-10

Advisory Opinion 87-2: Advertising the Solicitation of Deposits
http://www.fdic.gov/regulations/laws/rules/4000-3340.html#400087-2

Advisory Opinion 92-20: Display of Official Deposit Insurance Signs
http://www.fdic.gov/regulations/laws/rules/4000-7110.html#400092-20

Advisory Opinion 95-12: "Federal Deposit Insurance Corporation" Should not be Translated into Non-English Equivalent on Advertising
http://www.fdic.gov/regulations/laws/rules/4000-9420.html#400095-12

Advisory Opinion 91-60: Guidelines for Advertising of Insured Status by Savings Associations
http://www.fdic.gov/regulations/laws/rules/4000-6590.html#400091-60

Advisory Opinion 94-17: Night Depositories and Official Bank Signs
http://www.fdic.gov/regulations/laws/rules/4000-8890.html#400094-17

Advisory Opinion 93-42: Official Bank Sign Need not be Displayed on Night Depositories
http://www.fdic.gov/regulations/laws/rules/4000-8310.html#400093-42

Advisory Opinion 92-15: Official FDIC Sign Need not be Black or Gold, but Text and Symbol
http://www.fdic.gov/regulations/laws/rules/4000-7060.html#400092-15

Advisory Opinion 89-33: Savings Association Display of Official Eagle Logo
http://www.fdic.gov/regulations/laws/rules/4000-4070.html#400089-33

Advisory Opinion 90-77: Savings, Loan and Mortgage Charts Listing Both Insured and Uninsured Institutions Need not Include Official FDIC Advertising Statement
http://www.fdic.gov/regulations/laws/rules/4000-5960.html#400090-77

Advisory Opinion 92-70: Sign Intended as Supplement to Official Savings Association Sign may not be Displayed Because too Similar
http://www.fdic.gov/regulations/laws/rules/4000-7610.html#400092-70

Advisory Opinion 91-29: Size and Design of Official Bank or Savings Association Logo Placed at Teller Windows May not Vary from Requirements of 12 CFR Section 328.1
http://www.fdic.gov/regulations/laws/rules/4000-6280.html#400091-29

Advisory Opinion 96-7: Whether an Insured Depository Institution Can Operate Branch Under a Name that is Different Than That of the Insured Institution
http://www.fdic.gov/regulations/laws/rules/4000-9750.html#400096-7

Advisory Opinion 92-22: Whether FDIC Logo may be Displayed on Lapel Pin Worn by Bank Employees
http://www.fdic.gov/regulations/laws/rules/4000-7130.html#400092-22

Section 42 of the Federal Deposit Insurance (FDI) Act—Branch Closings

Introduction

Section 42 of the Federal Deposit Insurance (FDI) Act (12 USC §1831r) sets forth guidelines for financial institutions to notify the FDIC and its customers regarding proposals to close a branch. Financial institutions are also required to adopt policies for closings of branches, with special content requirements for closing notices relating to branches in low- or moderate-income areas.

Statuatory Overview

For purposes of Section 42, a branch is considered to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent. Section 42 does not apply to the following:

- An ATM, a remote service facility, a loan production office, or a temporary branch;
- The relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation:
  - Occurs within the immediate neighborhood; and
  - Does not substantially affect the nature of the business or customers served; or
- A branch that is closed in connection with an emergency acquisition.

Examination Objectives

The objectives are to determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:

- Providing prior notification of any branch closing to its appropriate Federal banking agency and customers of the branch.
- Establishing internal policies for branch closings.

Examination Procedures

1. Determine whether the institution has adopted a branch closing policy that ensures compliance with the Interagency Policy Statement Concerning Branch Closing Notices and Policies, regarding branch closing notices and Section 42 of the FDI Act. (Section 42(c))
2. Determine whether the institution's procedures for closing a branch have been followed since the latter of December 19, 1991, or the last examination in which compliance was assessed with the Policy Statement concerning branch closing notices and Section 42 of the FDI Act.
3. Determine whether the institution provided adequate notice of all branch closings to the FDIC at least 90 days prior to the proposed closing of any branch closed on or after December 19, 1991. (Section 42(a))
4. Determine that the institution provided adequate notice of the proposed closing to its customers at least 90 days prior to the proposed closing of the branch. (Section 42(b))

   The institution must:

   - Post a notice in a conspicuous manner on the premises of the proposed branch for a period of not less than 30 days ending on the date proposed for that closing, and
   - Include a notice in:
     - At least one regular account statement mailed to customers of the branch proposed to be closed, or
     - A separate mailing.
   - The notice must include:
     - A detailed statement of the reasons, and
     - Statistical or other information in support of such reasons.

NOTE: In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required shall also contain the mailing address of the FDIC and a statement that comments on the proposed closing may be mailed to the FDIC. (Section 42(c))

5. Determine if the institution has posted a notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing of any branch closed on or after December 19, 1991.

References

Section 42 of the FDI Act: Notice of Branch Closure
http://www.fdic.gov/regulations/laws/rules/1000-4400.html#1000sec.42

Interagency Policy Statement Concerning Branch Closing Notices and Policies
http://www.fdic.gov/regulations/laws/rules/5000-3830.html#5000policyso2

(This page intentionally left blank.)

The Electronic Signatures in Global and National Commerce Act (E-Sign Act)

Introduction

The Electronic Signatures in Global and National Commerce Act (E-Sign Act)[1], signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.

Subject to certain exceptions, the substantive provisions of the law were effective on October 1, 2000. Record retention requirements became effective on March 1, 2001. The E-Sign Act grandfathers existing agreements between a consumer and an institution to deliver information electronically. However, agreements made on or after October 1, 2000, are subject to the requirements of the E-Sign Act.

Summary of Major Provisions

Consumer Disclosures

Prior Consent, Notice of Availability of Paper Records

Prior to obtaining their consent, financial institutions must provide the consumer, a clear and conspicuous statement informing the consumer:

- of any right or option to have the record provided or made available on paper or in a non electronic form, and the right to withdraw consent, including any conditions, consequences, and fees in the event of such withdrawal;
- whether the consent applies only to the particular transaction that triggered the disclosure or to identified categories of records that may be provided during the course of the parties' relationship;
- describing the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and
- informing the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy.

See Section 101(c)(1)(B).

Hardware and Software Requirements; Notice of Changes

Prior to consenting to the use of an electronic record, a consumer must be provided with a statement of the hardware and software requirements for access to and retention of electronic records. *See* Section 101(c)(1)(i).

If the consumer consents electronically, or confirms his or her consent electronically, it must be in a manner that reasonably demonstrates the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent. *See* Section 101(c)(1)(C)(ii).

If a change in the hardware or software requirements need to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent, a financial institution must:

- provide the consumer with a statement of (a) the revised hardware and software requirements for access to and retention of electronic records, and (b) the right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal; and
- again comply with the requirements of subparagraph (c) of this section.

See Section 101(c)(1)(D).

Oral communications or a recording of an oral communication shall not qualify as an electronic record. *See* Section 101(c)(6).

Record Retention

The E-Sign Act requires a financial institution to maintain electronic records accurately reflecting the information contained in applicable contracts, notices or disclosures and that they remain accessible to all persons who are legally entitled to access for the period required by law in a form that is capable of being accurately reproduced for later reference. *See* Section 101(d).

Agreements reached with consumers prior to October 1, 2000, to deliver information electronically are exempt from the requirements of Section 101(d). However, for any agreements made with new or existing customers on or after October 1, 2000, the requirements of Section 101(c)(1) will supersede all other consumer consent procedures relating to the use of electronic disclosures set forth in other regulations.

Regulatory and Other Actions

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Nonetheless, on March 30, 2001, the Federal Reserve Board (FRB) adopted interim final rules (Interim Final Rules) establishing uniform standards for the electronic delivery of federally mandated disclosures for five consumer protection regulations: Regulation B, Equal Credit Opportunity; Regulation E, Electronic Fund Transfers; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending, and Regulation DD, Truth in Savings.

1 Public Law 106-229, June 30, 2000.

The Interim Final Rules provided guidance on the timing and delivery of electronic disclosures. Pursuant to the Interim Final Rules, disclosures can be provided by e-mail or can be made available at another location such as the institution's web site. If a disclosure, such as an account statement or a notice of change of terms, is provide at a web site, an institution must notify the consumer of the disclosure's availability by e-mail. In addition, the disclosures must remain available on the web site for 90 days.

On August 3, 2001, the FRB lifted the mandatory compliance date of October 1, 2001, and directed institutions to follow their existing procedures[2] or, alternatively, to comply with the Interim Final Rules until permanent rules are issued. Once permanent final rules are issued, the Board expects to afford institutions a reasonable period of time to comply with those rules.

Definitions

"Consumer" – The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

"Electronic" – The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic Agent" – The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action to respond to electronic records or performances in whole or in part without review or action by an individual at the time or the action or response.

"Electronic Record" – The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" – The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

"Federal Regulatory Agency" – The term "Federal regulatory agency" means an agency as that term is defined in section 552(f) of Title 5, United States code.

"Information" – The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

"Person" – The term "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

"Record" – The term "record" means information, that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Requirement" – The term "requirement" includes a prohibition.

"Self-Regulatory Organization" – The term "self-regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

"State" – The term "State" includes the District of Columbia and the territories and possessions of the United States.

"Transaction" – the term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct:

1. the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and
2. the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

Examination Procedures

1. Determine if and to what extent the financial institution electronically delivers compliance-related notices or disclosures subject to the consumer consent provisions of the Act.
2. Determine if the financial institution has established procedures to ensure compliance with the provisions of this Act.
3. Determine that the consumer, prior to consenting, is provided with a clear and conspicuous statement informing the consumer of any right or option to have the record provided or made available on paper or in nonelectronic form, and the right to withdraw the consent, including any conditions, consequences, or fees in the event of such withdrawal. Verify that the statement contains the following:
   a. informs the consumer whether the consent applies only to the particular transaction that triggered the disclosure

2 Existing procedures of the institutions are expected to be compliant with Federal Reserve Regulations E and DD.

or to identified categories of records that may be provided during the course of the parties' relationship;

b. describes the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and

c. informs the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy.

4. Determine that the consumer, prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of electronic records.
5. Determine that the consumer provides affirmative consent electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

NOTE: Oral communications shall not qualify as an electronic record.

6. If a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent, verify that the financial institution provides the consumer with the following:

   a. statement of the revised hardware and software requirements for access to and retention of electronic records;

   b. the right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal; and

   c. the consumer provides a new affirmative consent as previously outlined.

7. Determine that the financial institution maintains a single "authoritative" copy of any transferable record relating to a loan secured by real property. Such record must be "unique", "identifiable", and "unalterable".
8. Determine that the financial institution maintains electronic records accurately reflecting the information contained in applicable contracts, notices, or disclosures and that they remain accessible to all persons who are legally entitled to access for the period required by law in a form that is capable of being accurately reproduced for later reference.

References

FIL 79-98: Interagency Guidance on Electronic Financial Services and Consumer Compliance
http://www.fdic.gov/news/news/financial/1998/fil9879.html
Guidance Attachment
http://www.fdic.gov/news/news/financial/1998/fil9879a.pdf

FIL 66-2001: Lifting of Mandatory Compliance Date for Interim Rules Amending Regulations B, E, M, Z, and DD
http://www.fdic.gov/news/news/financial/2001/fil0166.html

FIL 40-2001: Interim Final Rules Amending Regulations B, E, M, Z, and DD Regarding Electronic Delivery of Required Disclosures
http://www.fdic.gov/news/news/financial/2001/fil0140.html

FIL 72-2000: Notice of Consumer Consent Requirements Applicable to the Electronic Delivery of Consumer Disclosures
http://www.fdic.gov/news/news/financial/2000/fil0072.html

DCA RD Memo 96-044: Electronic Banking Activities
http://fdic01/division/dsc/memos/memos/direct/6480-1.pdf

FIL 14-97: Examination Guidance on the Safety and Soundness Aspects of Electronic Banking Activities,
http://www.fdic.gov/news/news/financial/1997/fil9714.html

FIL 70-2001: FDIC Seeks Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services
http://www.fdic.gov/news/news/financial/2001/fil0170.html

FIL 30-2003: Federal Bank and Credit Union Regulatory Agencies Jointly Issue Guidance on the Risk Associated with Weblinking
http://www.fdic.gov/news/news/financial/2003/fil0330.html
Attachment
http://www.fdic.gov/news/news/financial/2003/fil0330a.html

(This page intentionally left blank.)

Prohibition Against Use of Interstate Branches Primarily for Deposit Production[1]

Introduction

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation ("the agencies"), jointly issued a final rule, effective October 10, 1997, that adopted uniform regulations[2] implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA).

IBBEA allows banks to branch across state lines. Section 109, however, prohibits any bank from establishing or acquiring a branch or branches outside of its home State, pursuant to IBBEA, primarily for the purpose of deposit production. Congress enacted section 109 to ensure that interstate branches would not take deposits from a community without the bank reasonably helping to meet the credit needs of that community.

Subsequently, section 106 of the Gramm-Leach-Bliley Act of 1999 (GLBA) amended section 109 by changing the definition of an "interstate branch" to include any branch of a bank controlled by an out-of State bank holding company. Interagency regulations implementing this amendment became effective October 1, 2002.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burden on banks. Consequently, the agencies' regulations do not impose additional data reporting requirements nor do they require a bank to produce, or assist in producing, relevant data.

Coverage

Section 109 applies to any bank that has covered interstate branches. Examples of covered interstate branches can be found at the end of the Examination Procedures in this section.

Definitions

"Covered Interstate Branch"

1. Any branch of a national bank, a State member bank, or a State nonmember bank, and any Federal branch of a foreign bank, or any uninsured or insured branch of a foreign bank licensed by a State, that:
   (i) is established or acquired outside the bank's home State pursuant to the interstatebranching authority granted by IBBEA or by any amendment made by IBBEA to any other provision of law; or
   (ii) could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in (i) and
2. any bank or branch of a bank controlled by an out-of-State bank holding company.

"Home State"

1. For State banks, home State means the State that chartered the bank.
2. With respect to a national bank, home State means the State in which the main office of the bank is located.
3. With respect to a bank holding company, home State means the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:
   (i) July 1, 1966; or
   (ii) the date on which the company becomes a holding company under the Bank Holding Company Act.
4. With respect to a foreign bank, home State means:
   (i) for purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 USC 3103(c) and Section 211.22 of the Federal Reserve Board's Regulations (12 CFR §211.22), Section 28.11(o)) of the OCC's regulations (12 CFR §28.11(o), and Section 347.202(j) of the FDIC's regulations (12 CFR §347.202(j)); and
   (ii) for purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:
   (a) July 1, 1966; or
   (b) the date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

"Host State" – means a State in which a covered interstate branch is established or acquired.

"Host State Loan-to-Deposit Ratio" – is the ratio of total loans in the host State to total deposits from the host State for all banks that have that State as their home State.

"Out-of-State Bank Holding Company" – means, with respect to any State, a bank holding company whose home State is another State.

"Statewide Loan-to-Deposit Ratio" – relates to an individual bank and is the ratio of the bank's loans to its deposits in a particular State where it has one or more covered interstate branches.

The Two Step Test

Beginning no earlier than one year after a covered interstate branch is acquired or established, the agency will determine

1 This section fully incorporates the examination procedures issued under DSC RD Memo 03-006: Interstate Banking Examination Procedures for Section 109 of the Riegle-Neal Interstate Banking and Branching Effiency Act of 1994.

2 *See* 12 CFR 25, 12 CFR 208, and 12 CFR 369.

whether a bank is complying with the provisions of section 109. Section 109 provides a two-step test for determining compliance with the prohibition against interstate deposit production offices:

1. Loan-to-deposit ratio. The first step involves a loan-to-deposit (LTD) ratio screen, which is designed to measure the lending and deposit activities of covered interstate branches. The LTD ratio screen compares the bank's statewide LTD ratio to the host State LTD ratio. If the bank's statewide LTD ratio is at least one-half of the relevant host State LTD ratio, the bank passes the section 109 evaluation and no further review is required. Host State ratios are prepared, and made public, by the agencies annually. For the most recent ratios, *see* OCC bulletins, FDIC Financial Institution Letters, or FRB Press Releases.
2. Credit needs determination. The second step is a credit needs determination that is conducted if a bank fails the LTD ratio screen or if the LTD ratio cannot be calculated due to insufficient data or due to data that are not reasonably available. This step requires the examiner to review the activities of the bank, such as its lending activity and performance under the CRA, in order to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State. Banks may provide the examiner with any relevant information including loan data, if a credit needs determination is performed.

Although Section 109 specifically requires the examiner to consider a bank's CRA rating when making a credit needs determination, a bank's CRA rating should not be the only factor considered. However, since most of the other factors (*see* procedure for Credit Needs Determination) are taken into account as part of a bank's performance context under CRA, it is expected that banks with a satisfactory or better CRA rating will receive a favorable credit needs determination. Banks with a less than satisfactory CRA rating may receive an adverse credit needs determination unless mitigated by the other factors enumerated in section 109. To ensure consistency, compliance with Section 109 generally should be reviewed in conjunction with the evaluation of a bank's CRA performance.

With respect to institutions designated as wholesale or limited purpose banks, a credit needs determination should consider a bank's performance using the appropriate CRA performance test provided in the CRA regulations. For banks not subject to CRA, including certain special purpose banks and uninsured branches of foreign banks,[3] the examiner should use the CRA regulations only as a guideline when making a credit needs determination for such institutions. Section 109 does not obligate the institution to have a record of performance under the CRA nor does it require the institution to pass any CRA performance tests.

Enforcement and Sanctions

Before a bank can be sanctioned under section 109, the appropriate agency is required to demonstrate that the bank failed to comply with the LTD ratio screen and failed to reasonably help meet the credit needs of the communities served by the bank in the host State. Since the bank must fail both the LTD ratio screen and the credit needs determination in order to be in noncompliance with Section 109, the agencies have an obligation to apply the LTD ratio screen before seeking sanctions, regardless of the regulatory burden imposed. Thus, if a bank receives an adverse credit needs determination, the LTD ratio screen must be applied even if the data necessary to calculate the appropriate ratio are not readily available. Consequently, the agencies are required to obtain the necessary data to calculate the bank's statewide LTD ratio before sanctions are imposed.

If a bank fails both steps of the section 109 evaluation, the statute outlines sanctions that the appropriate agency can impose. The sanctions are:

(i) ordering the closing of the interstate branch in the host State; and

(ii) prohibiting the bank from opening a new branch in the host State.

Sanctions, however, may not be warranted if a bank provides reasonable assurances to the satisfaction of the appropriate agency that it has an acceptable plan that will reasonably help to meet the credit needs of the communities served, or to be served. An examiner should consult with the RO before discussing possible sanctions with any bank. Also, before sanctions are imposed, the agencies stated in the preamble to the final 1997 regulation that they intend to consult with State banking authorities.

Examination Objective

To ensure that a bank is not operating a covered interstate branch(es), as defined, primarily for the purpose of deposit production, by determining if the bank meets (i) the loan-to-deposit (LTD) ratio screen, or (ii) the credit needs determination requirements of section 109 of IBBEA.

Examination Procedures

Examples of covered interstate branches can be found at the end of this section.

Identification of Covered Interstate Branches

1. *Banks controlled by an out-of-State bank holding company.*

3 A special purpose bank that does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business is not evaluated for CRA performance by the agencies. In addition, branches of a foreign bank, unless the branches are insured or resulted from an acquisition as described in the International Banking Act, 12 USC 3101 et seq., are not evaluated for CRA performance by the agencies.

- Determine if the bank is controlled by an out-of-State bank holding company by identifying the home State of the bank and the home State of the bank holding company. To determine the home State of a bank, refer to the definition. To determine the home State of a bank holding company, refer to home State data available from your agency and confirm the home State with bank management.
- If the bank is not controlled by a bank holding company, or the home State of the bank holding company is the same state as the home State of the bank, the bank does not have any covered interstate branches under procedures #1. Go to procedure #2.
- If the home State of the bank holding company is not the same as the home State of the bank, then the bank meets the definition of a covered interstate branch and is subject to section 109. Go to procedures #2 and #3.

2. *Banks with interstate branches.* Determine if the bank has any branches that were established or acquired pursuant to IBBEA in states other than the bank's home State. If so, the bank has a covered interstate branch. Go to procedure #3. If the bank has no covered interstate branches under procedures #1 and #2, the bank is not subject to section 109 and no further review is necessary.
3. *One-year rule.* For the covered interstate branches identified in procedure #1 and/or #2, determine if any have been covered interstate branches for one year or more. Note that, if any of a bank's covered interstate branches within a particular state have been covered interstate branches for one year or more, then all of the bank's covered interstate branches within that State are subject to review. If any branch has been a covered interstate branch for one year or more, go to procedure #4. If not, no further review is necessary at this time.

Assessing Compliance with the LTD Ratio Screen

4. For a covered interstate branch subject to section 109, determine if the bank has sufficient data to calculate a statewide LTD ratio for each respective host State. (The bank is not required to provide this information or assist in providing this information.) For States where the bank has sufficient data, go to procedure #5. For States where the bank does not have sufficient data, go to procedure #6.
5. For each host State where the bank can provide loan and deposit data, calculate and compare the bank's statewide LTD ratio to the applicable host State LTD ratio provided by the agencies. If the bank's statewide LTD ratio equals or exceeds one-half of the relevant host State LTD ratio, the bank passes the LTD ratio screen and the section 109 evaluation in that state and no further review is necessary. If the bank's statewide LTD ratio is less than one-half of the host State LTD ratio in that state, the bank fails the LTD ratio screen. Go to procedure #6.

Credit Needs Determination

6. For each host State identified in procedure #4 and/or #5, determine whether the bank is reasonably helping to meet the credit needs of communities served by the bank in the host State. When making this determination, consider the following items:
   - whether the covered interstate branches were formerly part of a failed or failing depository institution;
   - whether the covered interstate branches were acquired under circumstances where there was a low LTD ratio because of the nature of the acquired institution's business or loan portfolio;
   - whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host State;
   - the most recent ratings (overall rating, multistate MSA rating, and State ratings) received by the bank under the Community Reinvestment Act (CRA);
   - economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;
   - the safe and sound operation and condition of the bank; and
   - the CRA regulation, examination procedures, and interpretations of the regulation.

If the bank passes the credit needs determination test, the bank complies with section 109 and no further review is necessary. If the bank fails the credit needs determination test but a LTD ratio screen has not been conducted, go to procedure #7. If the bank fails the credit needs determination test and has failed the LTD ratio screen, the bank is in noncompliance with section 109. Go to procedure #8.

Determining Whether Sanctions are Warranted

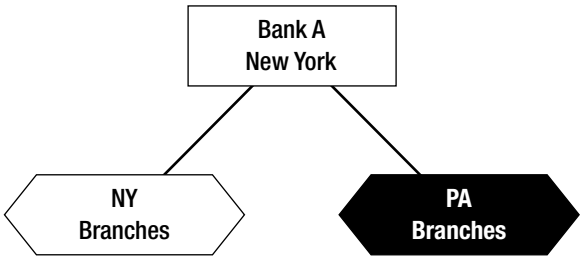
7. Calculate the bank's statewide LTD ratio for each host State in which the bank failed the credit needs determination test. The data used to calculate these ratios may be obtained from any reliable source. The bank may, but is not required to, provide the examiner with additional data at any time during the examination. If the bank's statewide LTD ratio(s) is equal to or greater than one-half of the host State LTD ratio, the bank complies with section 109 requirements and no further review is necessary. If a bank's statewide LTD ratio is less than one-half of the respective host State LTD ratio, the bank is in noncompliance with section 109. Go to procedure #8.
8. Consult the RO to determine whether sanctions are warranted.

Examination Checklist		
Identify covered interstate branches subject to Section 109		
	Yes	No
Evaluation		
1. Does the bank have any covered interstate branches? Determine: (a) if the bank has established or acquired any branches outside the bank's home State pursuant to the interstate branching authority granted by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, or (b) whether the bank, including a bank consisting of only a main office, is controlled by an out-of-State bank holding company as defined in section 2(o)(7) of the Bank Holding Company Act of 1956.		
If the answer to both (a) and (b) is No, no further review is necessary.		
2. Have any covered interstate branches been covered interstate branches for one year or more? If any of a bank's covered interstate branches within a particular state have been covered interstate branches for one year or more, then all of the bank's covered interstate branches within that state are subject to review.		
If the answer is No, no further review is necessary.		
Assess Compliance with the Loan-to-Deposit (LTD) Ratio Screen		
3. Does the bank have sufficient data to calculate a statewide LTD ratio(s) in each respective host State for covered interstate branches subject to section 109?		
For each host State where the answer is No, proceed to #5.		
4. For each host State where a covered interstate branch exists, calculate the bank's statewide LTD ratio. Is the statewide LTD ratio equal to or greater than one-half of the host state LTD ratio?		
For each host State where the answer is Yes, the bank complies with section 109 and no further review is necessary. For each host State where the answer is No, proceed to #5.		
Perform Credit Needs Determination		
5. For each host State identified in #3 or #4, is the bank reasonably helping to meet the credit needs of the communities served by the bank in the host State? When making this determination, consider the following items:		
• Whether the covered interstate branches were formerly part of a failed or failing depository institution;		
• Whether the covered interstate branches were acquired under circumstances where there was a low LTD ratio because of the nature of the acquired institution's business or loan portfolio;		
• Whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host State;		

Examination Checklist (cont.)	Yes	No
• The most recent ratings (overall rating, multistate MSA rating, and State ratings) received by the bank under the Community Reinvestment Act (CRA);		
• Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;		
• The safe and sound operation and condition of the bank; and		
• The CRA regulation, examination procedures, and interpretations of this regulation.		
If the bank passes the credit needs determination test, the bank complies with section 109 and no further review is necessary. If the bank fails the credit needs determination test but the LTD ratio screen has not yet been conducted, go to #6. If the bank fails the credit needs determination test and has failed the LTD ratio screen, go to #7.		
Determine if Sanctions are Warranted		
6. Calculate the statewide LTD ratio for each host State where the bank failed the credit needs determination test. Is this ratio equal to or greater than one-half of the host State LTD ratio?		
If the answer is Yes, the bank complies with section 109 and no further review is necessary. If the answer is No, the bank is in noncompliance with section 109 (go to #7).		
7. After consultation with RO, are sanctions warranted?		

Examples of Covered Interstate Branches

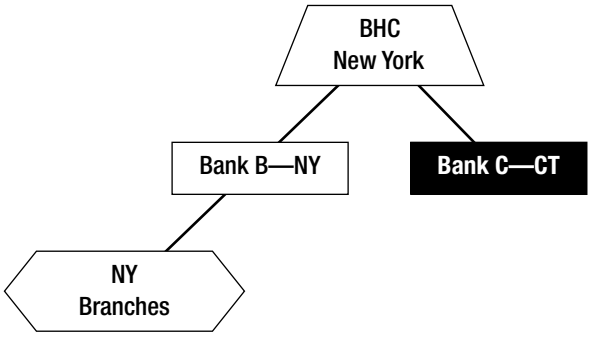
Bank with branches outside of its home State.



Bank A is an interstate bank with branches in PA that were established or acquired under IBBEA. Bank A's home State is NY and its host State is PA. The PA branches are covered interstate branches subject to the section 109 review. Bank A's statewide loan-to-deposit (LTD) ratio in PA is compared to the host State LTD ratio for PA.

The section 109 screen is conducted at the same time as a bank's CRA examination.

Bank, consisting only of a main office, controlled by an out-of-State bank holding company.

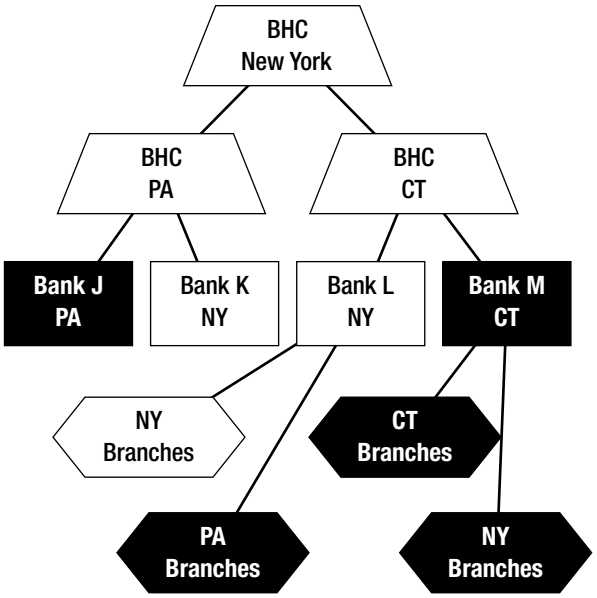


Banks B and Bank C are both controlled by a BHC whose home State is NY. Bank B is an intrastate bank and is not subject to the section 109 review.

Bank C's home State is Connecticut and it is subject to the section 109 review because it is controlled by an out-of-State BHC whose home State is NY. Bank C's statewide LTD ratio in CT will be compared to the host State LTD ratio for CT.

The section 109 screen is conducted at the same time as a bank's CRA examination.The section 109 screen is conducted at the same time as a bank's CRA examination.

Covered interstate branches under a multi-tiered bank holding company structure.



This example illustrates the requirement to look to the top tier BHC when determining whether to conduct the section 109 review. Banks J, K, L, and M are all controlled by a top-tier BHC whose home State is NY.

Out-of-State BHC: Banks J and M are subject to section 109 reviews because an out-of-State top tier BHC controls both of them. Bank J's home State is PA; its statewide LTD ratio in PA will be compared to the host State LTD ratio for PA. Bank M's home tate is CT; its statewide LTD ratio in CT will be compared to the host State LTD ratio for CT.

Out-of-State branches: Bank M's branches in NY also are subject to the section 109 review because Bank M is an interstate bank. Bank M's home State is CT; its statewide LTD ratio in NY is compared to the host State LTD ratio for NY. Bank L's branches in PA also are subject to the section 109 review because Bank L is an interstate bank. Bank L's home State is NY; its statewide LTD ratio in PA will be compared to the host State LTD ratio for PA.

Not subject to 109 review: Bank K is not subject to review for section 109 compliance because an out-of-State BHC does not control it and it does not have interstate branches.

The section 109 screen is conducted at the same time as a bank's CRA examination.

References

Regulation - Part 369: Prohibition Against Use of Interstate Branches Primarily for Deposit Production
http://www.fdic.gov/regulations/laws/rules/2000-9100.html

Job Aids

Host State Loan-to-Deposit Ratios
http://www.fdic.gov/news/news/
(Updated annually. Check current year.)

List of Interstate Banks/Branches
http://fdic01/division/dsc/compliance/interstate/index.html
(Updated annually. Check current year.)

List of Banks Controlled by Out-of-State BHCs
http://fdic01/division/dsc/compliance/interstate/index.html
(Updated annually. Check current year.)

(This page intentionally left blank.)

XI. Community Reinvestment Act

Contents

Community Reinvestment Act **XI–1.1**
Introduction XI–1.1
Small Bank **XI–1.1**
Examination Procedures for Small Institutions XI–1.1
Ratings XI–1.4
Public File Checklist XI–1.6
CRA Ratings Matrix — Small Institutions XI–1.7
Intermediate Small Bank **XI-2.1**
Intermediate Small Institution Examination Procedures XI-2.1
Lending Test Ratings Matrix — Intermediate Small Institutions XI-2.4
Intermediate Small Institution Community Development Test XI-2.5
Overall Intermediate Small Institution CRA Rating XI-2.5
Community Development Test Ratings Matrix—Intermediate Small Institutions XI-2.6
Public File Checklist XI-2.7
Large Bank **XI-3.1**
Examination Procedures for Large Institutions XI-3.1
Lending, Investment, and Service Tests for Large Retail Institutions XI-3.2
Community Development Services XI-3.6
Ratings XI-3.6
Public File Checklist XI-3.8
Wholesale/Limited Purpose Institution **XI-4.1**
Examination Procedures for Limited Purpose and Wholesale Institutions XI-4.1
Community Development Test XI-4.2
Ratings XI-4.3
Public File Checklist XI-4.4
Community Development Ratings Matrix — Wholesale/Limited Purpose Institutions XI-4.5
Institutions with Strategic Plans **XI-5.1**
Examination Procedures for Institutions with Strategic Plans XI-5.1
Ratings XI-5.2
Public File Checklist XI-5.3
CRA Ratings System **XI-6.1**
Introduction XI-6.1
Ratings Definitions XI-6.1
Wholesale or Limited-Purpose Banks XI-6.4
Banks Evaluated under the Small Bank Performance Standards XI-6.4
Community Development Test Ratings for Intermediate Small Banks. XI-6.5
Overall Rating. XI-6.5
Strategic Plan Assessments XI-6.5
Lending Test Matrix XI-6.6
Lending Test Matrix — cont. XI-6.7
Service Test Matrix XI-6.8
Investment Test Matrix XI-6.9

CRA Sunshine – Disclosure and Reporting of CRA-Related Agreements **XI-7.1**
Introduction XI-7.1
Definitions XI-7.1
Disclosure and Reporting of CRA — Related Agreements Examination Objective XI-7.3
Examination Procedures XI-7.3
References XI-7.6
Job Aids XI-7.7
Community Contacts **XI-8.1**
Introduction XI-8.1
Objectives XI-8.1
General Guidelines XI-8.1
Treatment of Confidential Information XI-8.1
Compliance Report of Examination and CRA Performance Evaluation XI-8.1
Sharing Information XI-8.1
Preparation for the Interview XI-8.1
Review of Information on Assessment Area(s) XI-8.2
Review Process XI-8.2
Identify Potential Community Contacts XI-8.3
Organization Types XI-8.3
Community-Based Development or Financial Intermediaries XI-8.4
Conducting the Interview XI-8.6
Background Information on Community Contact XI-8.6
Obtaining a Community Profile XI-8.7
Assessing Opportunities for Financial Institution Participation XI-8.8
Assessing Opportunities for Participation XI-8.9
Obtaining Local Perspectives on the Performance of Financial Institutions XI-8.10
Use of the Community Contact Form XI-8.11
Sampling Guidelines CRA **XI-9.1**
Introduction XI-9.1

Community Reinvestment Act[1]

Introduction

The Community Reinvestment Act (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations. It was enacted by the Congress in 1977 (12 USC 2901) and is implemented by Regulations 12 CFR Parts 25, 228, 345, and 563e. The Regulations were revised in 1995 and 2005.

The CRA requires that each insured depository institution's record in helping meet the credit needs of its entire community be evaluated periodically. That record is taken into account in considering an institution's application for deposit facilities, including mergers and acquisitions. CRA examinations are conducted by the federal agencies that are responsible for supervising depository institutions: the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

The agencies, through the FFIEC, have established interagency examination procedures for the following types of institutions: Small Institutions, Intermediate Small Institutions, Large Retail Institutions, Limited Purpose and Wholesale Institutions, and Institutions under Strategic Plans. The five different procedures correspond to the five alternative evaluation methods provided in the CRA regulations and are designed to respond to basic differences in institutions' structures and operations. All of the procedures reflect the intent of the regulation to establish performance-based CRA examinations that are complete and accurate but, to the maximum extent possible, mitigate the compliance burden for institutions. There are also instructions for writing public evaluations; the public evaluation template for each institution type is provided in Section XII.

Small Bank

Small Institutions have a streamlined assessment method. The regulations contain only five performance criteria under the small bank lending test:

1. The institution's loan-to-deposit ratio adjusted for seasonal variation and, as appropriate, other lending related activities such as secondary market participation, community development loans or qualified investments;
2. The percentage of loans and other lending-related activities located in the institution's assessment area(s);
3. The distribution of lending among borrowers of different income levels and businesses and farms of different sizes;
4. The distribution of lending among geographies of different income levels; and
5. The institution's record of taking action, if warranted, in response to written complaints about its CRA performance.

Small institutions are eligible for a rating of Outstanding, as well as Satisfactory. An examiner may conclude that an institution's performance so exceeds the standards for a Satisfactory rating under the five core criteria that it merits a rating of Outstanding. In addition, at the institution's option, the examiner will consider the institution's performance in making qualified investments and in providing services that enhance credit availability in its assessment area(s) in order to determine whether the institution merits an Outstanding rating.

In carrying out their examination responsibilities, examiners should exercise judgment and common sense in deciding how much material to review and what steps are necessary to reach an accurate conclusion. For example, if an institution's assessment area(s) is comprised of only a few homogenous geographies, a geographic analysis of loans within the assessment area(s) may be unnecessary. Or, if an institution has done an analysis to determine where, and to whom, it is making loans in its assessment area(s) to assist itself in its business efforts, examiners may be able to validate and then use the institution's analysis rather than conduct a detailed analysis of their own. In other words, when evaluating the performance criteria, examiners should always consider and use available, reliable information.

Similarly, if an institution's loan-to-deposit ratio appears low, the examination procedures ask the examiner to evaluate the institution's lending-related activities, such as loan sales and community development lending and investments to determine if they materially supplement its lending performance as reflected in its loan-to-deposit ratio. However, such an analysis may not be necessary or a less extensive analysis may be sufficient if the loan-to-deposit ratio is high.

Examination Procedures for Small Institutions

Examination Scope

1. For institutions with more than one assessment area, identify assessment areas for full scope review. In making those selections, review prior CRA performance evaluations, available community contact materials, and

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-032: Interagency Community Reinvestment Act Examination Procedures for Intermediate Small Institutions *and* DSC RD Memo 06-009: Revised Interagency Community Reinvestment Act Examination Procedures.

reported lending data and demographic data on each assessment area. Consider factors such as:

a. The lending opportunities in the different assessment areas;
b. The level of the institution's lending activity in the different assessment areas, including low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies[2] based on (a) rates of poverty, unemployment, and population loss, or (b) population size, density, and dispersion;[3]
c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
d. The existence of apparent anomalies in the reported HMDA data for any particular assessment area(s);
e. The length of time since the assessment area(s) was last examined using a full scope review;
f. The institution's prior CRA performance in different assessment areas;
g. Examiners' knowledge of the same or similar assessment areas; and
h. Comments from the public regarding the institution's CRA performance.

2. For interstate institutions, a rating must be assigned for each state where the institution has a branch and for each multi-state metropolitan statistical area (MSA) or metropolitan division (MD) where the institution has branches in two or more states that comprise that multi-state MSA/MD. Select one or more assessment areas in each state for examination using these procedures.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic and loan data, to the extent available, for each assessment area under review.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), Uniform Bank Performance Reports (UBPR), annual reports, supervisory reports, and prior CRA evaluations of the institution under examination. Review financial information and the prior CRA evaluations of institutions of similar size that serve the same or similar assessment area(s).
3. Consider any information the institution may provide on its local community and economy, its business strategy, its lending capacity, or that otherwise assists in the evaluation of the institution.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review the institution's public file for any comments received by the institution or the agency since the last CRA performance evaluation for information that assists in the evaluation of the institution.
6. Document the performance context information gathered for use in evaluating the institution's performance.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
   a. Consists of one or more MSAs/MDs or contiguous political subdivisions (e.g., counties, cities, or towns);
   b. Includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans;
   c. Consists only of whole census tracts;
   d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multi-state MSA/MD;
   e. Does not reflect illegal discrimination; and
   f. Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the institution's size, branching structure, and financial condition.
2. If an institution's assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

2 The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency

3 A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

Performance Criteria

Loan-to-Deposit Analysis

1. From data contained in Call Reports or UBPRs, calculate the average loan-to-deposit ratio since the last examination by adding the quarterly loan-to-deposit ratios and dividing by the number of quarters.
2. Evaluate whether the institution's average loan-to-deposit ratio is reasonable in light of information from the performance context including, as applicable, the institution's capacity to lend, the capacity of other similarly-situated institutions to lend in the assessment area(s), demographic and economic factors present in the assessment area(s), and the lending opportunities available in the institution's assessment area(s).
3. If the loan to deposit ratio does not appear reasonable in light of the performance context, consider the number and the dollar volume of loans sold to the secondary market, or the innovativeness or complexity of community development loans and qualified investments to assess the extent to which these activities compensate for a low loan-to-deposit ratio or supplement the institution's lending performance as reflected in its loan-to-deposit ratio.
4. Discuss the preliminary findings in this section with management.
5. Summarize in workpapers conclusions regarding the institution's loan-to-deposit ratio.

Comparison of Credit Extended Inside and Outside of the Assessment Area(s)

1. If available, review HMDA data, automated loan reports, and any other reports that may have been generated by the institution to analyze the extent of lending inside and outside of the assessment area(s). If a report generated by the institution is used, test the accuracy of the output.
2. If loan reports or data analyzing lending inside and outside of the assessment area(s) are not available or comprehensive, or if their accuracy cannot be verified, use sampling guidelines to select a sample of loans originated, purchased or committed to calculate the percentage (by number and dollar amount) located within the assessment area(s).
3. If the percentage of loans or other lending related activities in the assessment area is less than a majority, then the institution does not meet the standards for "Satisfactory" under this performance criterion. In this case, consider information from the performance context, such as information about economic conditions, loan demand, the institution's size, financial condition, branching network, and business strategies when determining the effect of not meeting the standards for satisfactory for this criterion on the overall rating for the institution.
4. Discuss the preliminary findings in this section with management.
5. Summarize in workpapers conclusions regarding the institution's level of lending or other lending related activities inside and outside of its assessment area(s).

Distribution of Credit Within the Assessment Area(s)

1. Determine whether the number and income distribution of geographies in the assessment area(s) are sufficient for a meaningful analysis of the geographic distribution of the institution's loans in its assessment area(s).
2. If a geographic distribution analysis of the institution's loans would be meaningful and the necessary geographic information (street address or census tract numbers) is collected by the institution in the ordinary course of its business, determine the distribution of the institution's loans in its assessment area(s) among low-, moderate-, middle-, and upper-income geographies. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
3. If a geographic analysis of loans in the assessment area(s) is performed, identify groups of geographies, by income categories, in which there is little or no loan penetration. Note that institutions are not expected to lend in every geography.
4. To the extent information about borrower income (individuals) or revenues (businesses) is collected by the institution in the ordinary course of its business, determine the distribution of loans in the assessment area(s) by borrower income and by business revenues. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
5. Identify categories of borrowers by income or business revenue for which there is little or no loan penetration.
6. If an analysis of the distribution of loans among geographies of different income levels would not be meaningful (e.g., very few geographies in the assessment area(s)) or an analysis of lending to borrowers of different income or revenues could not be performed (e.g., income data are not collected for certain loans), consider possible proxies to use for analysis of the institution's distribution of credit. Possibilities include analyzing geographic distribution by street address rather than geography (if data are available and the analysis would be meaningful) or analyzing the distribution by loan size as a proxy for income or revenues of the borrower.
7. If there are categories of low penetration, form conclusions about the reasons for that low penetration. Consider available information from the performance context, including:

a. Information about the institution's size, branch network, financial condition, supervisory restrictions (if any) and prior CRA record;
b. Information from discussions with management, loan officers, and members of the community;
c. Information about economic conditions, particularly in the assessment area(s);
d. Information about demographic or other characteristics of particular geographies that could affect loan demand, such as the existence of a prison or college; and
e. Information about other lenders serving the same or similar assessment area(s).

8. Discuss the preliminary findings in this section with management.
9. Summarize in workpapers conclusions concerning the geographic distribution of loans and the distribution of loans by borrower characteristics in the institution's assessment area(s).

Review of Complaints

1. Review all complaints relating to the institution's CRA performance received by the institution (these should all be contained in the institution's public file) and those that were received by its supervisory agency.
2. If there were any complaints, evaluate the institution's record of taking action, if warranted, in response to written complaints about its CRA performance.
3. If there were any complaints, discuss the preliminary findings in this section with management.
4. If there were any complaints, summarize in workpapers conclusions regarding the institution's record of taking action, if warranted, in response to written complaints about its CRA performance. Include the total number of complaints and resolutions with examples that illustrate the nature, responsiveness to, and resolution of, the complaints.

Investments and Services (at the institution's option to enhance a "Satisfactory" rating)

1. If the institution chooses, review its performance in making qualified investments and providing branches and other services and delivery systems that enhance credit availability in its assessment area(s). Performance with respect to qualified investments and services may be used to enhance an institution's overall rating of "Satisfactory", but cannot be used to lower a rating that otherwise would have been assigned.
2. To evaluate the institution's performance in making qualified investments that enhance credit availability in its assessment area(s), consider:
   a. The dollar amount of qualified investments, by type and location;
   b. The impact of those investments on the institution's assessment area(s); and
   c. The innovativeness or complexity of the investments.
3. To evaluate the institution's record of providing branches and other services and delivery systems that enhance credit availability in its assessment area(s), consider:
   a. The number of branches and ATMs located in the institution's assessment area(s);
   b. The number of branches and ATMs located within, or that are readily accessible to, low- and moderate-income geographies compared to those located in, or readily accessible to middle- and upper-income geographies;
   c. The type and level of service(s) offered at branches and ATMs and alternative delivery systems; and
   d. The institution's record of opening and closing branches.

Ratings

1. Group the analyses of the assessment areas examined by MSA[4] and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. Summarize conclusions about the institution's performance in each MSA and the nonmetropolitan portion of each state in which an assessment area received a full scope review. If two or more assessment areas in an MSA or in the nonmetropolitan portion of a state received full scope reviews, weigh the different assessment areas considering such factors as:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending opportunities in each;
   c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
3. For assessment areas in MSAs and nonmetropolitan areas that were not examined using the full scope procedures, consider facts and data related to the institution's lending to ensure that performance in those assessment areas is not inconsistent with the conclusions based on the assessment areas that received full scope examinations.
4. For institutions operating in only one multi-state MSA or one state, assign one of the four preliminary ratings -- "Satisfactory", "Outstanding", "Needs to Improve", and "Substantial Noncompliance" -- in accordance with step 6 below. To determine the relative significance of each MSA

4 The reference to MSA may also reference MD.

and nonmetropolitan area to the institution's preliminary rating, consider:

a. The significance of the institution's activities in each compared to the institution's overall activities;
b. The lending opportunities in each;
c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
d. Demographic and economic conditions in each.

5. For other institutions, assign one of the four preliminary ratings – "Satisfactory", "Outstanding", "Needs to Improve", and "Substantial Noncompliance" -- for each state in which the institution has at least one branch and for each multi-state MSA in which the institution has branches in two or more states in accordance with step #6 below. To determine the relative significance of each MSA and the nonmetropolitan area on the institution's preliminary state rating, consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending opportunities in each;
   c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
6. Consult the Small Institution Ratings Matrix and information in workpapers to assign a preliminary rating of:
   a. "Satisfactory" if the institution's performance meets each of the standards for a satisfactory rating or if exceptionally strong performance with respect to some of the standards compensates for weak performance in others;
   b. "Needs to Improve" or "Substantial Noncompliance" if the institution's performance fails to meet the standards for "Satisfactory" performance. Whether a rating is "Needs to Improve" or "Substantial Noncompliance" will depend upon the degree to which the institution's performance has failed to meet the standards for a "Satisfactory" rating; or
   c. "Outstanding" if the institution meets the rating descriptions and standards for "Satisfactory" for each of the five core criteria, and materially exceeds the standards for "Satisfactory" in some or all of the criteria to the extent that an outstanding rating is warranted, or if the institution's performance with respect to the five core criteria generally exceeds "Satisfactory" and its performance in making qualified investments and providing branches and other services and delivery systems in the assessment area(s) supplement its performance under the five core criteria sufficiently to warrant an overall rating of "Outstanding".
7. For an institution with branches in more than one state or multi-state MSA, assign a preliminary rating to the institution as a whole taking into account the institution's record in different states or multi-state MSAs by considering:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending opportunities in each;
   c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
8. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA.[5] If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans have been considered as part of the institution's lending performance, was found, consider:
   a. The nature, extent, and strength of the evidence of the practices;
   b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
   c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
   d. Any other relevant information.
9. Assign a final rating for the institution as a whole and, if applicable, each state in which the institution has at least one branch and each multi-state MSA in which it has branches in two or more states, considering:
   a. The institution's preliminary rating; and
   b. Any evidence of discriminatory or other illegal credit practices (*see* #8 above).
10. Discuss conclusions with management.

5 "Evidence of discriminatory or other illegal credit practices" includes, but is not limited to: (a) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act; (b) Violations of the Home Ownership and Equity Protection Act; (c) Violations of section 5 of the Federal Trade Commission Act; (d) Violations of section 8 of the Real Estate Settlement Procedures Act; and (e) Violations of the Truth in Lending Act regarding a consumer's right of rescission.

11. Write an evaluation of the institution's performance for the examination report and the public evaluation.
12. Prepare recommendations for a supervisory strategy and for matters that require attention or follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine, as needed, whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file available in the main office and in a branch in each state contains:
   a. All written comments from the public relating to the institution's CRA performance and responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
   b. The institution's most recent CRA Public Performance Evaluation;
   c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
   d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, and their street addresses and geographies;
   e. The HMDA Disclosure Statement for the prior two calendar years, if applicable;
   f. The institution's loan-to-deposit ratio for each quarter of the prior calendar year;
   g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination; and
   h. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services among locations.
3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services available at the branch or a description of material differences from the services generally available at the institution's other branches.

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

CRA Ratings Matrix — Small Institutions

Characteristic	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Loan-to-Deposit Ratio	The loan-to-deposit ratio is more than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is less than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is unreasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.
Assessment Area(s) Concentration	A substantial majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are outside the institution's assessment area(s)	A substantial majority of loans and other lending related activities are outside the institution's assessment area(s)
Geographic Distribution of Loans	The geographic distribution of loans reflects excellent dispersion throughout the assessment area(s).	The geographic distribution of loans reflects reasonable dispersion throughout the assessment area(s).	The geographic distribution of loans reflects poor dispersion throughout the assessment area(s).	The geographic distribution of loans reflects very poor dispersion throughout the assessment area(s).
Borrower's Profile	The distribution of borrowers reflects, given the demographics of the assessment area(s), excellent penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), reasonable penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), very poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.
Response to Substantiated Complaints	The institution has taken noteworthy, creative action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution has taken appropriate action in response to substantiate complaints about its performance in meeting assessment area credit needs.	The institution has taken inadequate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution is unresponsive to substantiated complaints about its performance in meeting assessment area credit needs.
Investments	The institution's investment record enhances credit availability in its assessment area.	N/A	N/A	N/A
Services	The institution's record of providing branches, ATMs, loan production offices, and/or other services and delivery systems enhances credit availability in its assessment area(s).	N/A	N/A	N/A

(This page intentionally left blank.)

Intermediate Small Bank

On July 19, 2005, the FDIC, FRB, and OCC jointly approved amendments to the CRA regulations which took effect on September 1, 2005. Among the revisions to the regulations, "intermediate small banks" are defined under §345.12 (u) as small banks with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years (these asset figures may be adjusted annually). These banks are evaluated under two tests: the small bank lending test and a community development test.

Intermediate small institutions are not required to collect and report CRA loan data for small business, small farm, and community development loans. Nevertheless, the CRA regulations continue to allow small institutions, including intermediate small institutions, to opt for an evaluation under the (large bank) lending, investment, and service tests, provided the data is collected and reported.

To evaluate the distribution of loans under intermediate small bank procedures, examiners should review loan files, bank reports, or any other information or analyses a bank may provide. To evaluate community development loans, investments, and services under the intermediate small bank community development test, examiners will review (1) any information a bank may provide, including the results of any assessment of community development needs or opportunities if conducted by the bank, and (2) performance context information obtained by examiners from community, government, civic or other sources.

Intermediate Small Institution Examination Procedures

Examination Scope

For institutions (interstate and intrastate) with more than one assessment area, identify assessment areas for a full scope review. A full scope review is accomplished when examiners complete all of the procedures for an assessment area. For interstate institutions, a minimum of one assessment area from each state, and a minimum of one assessment area from each multistate MSA/MD, must be reviewed using the full scope examination procedures.

1. To identify assessment areas for full scope review, review prior CRA performance evaluations, available community contact materials, and reported lending data and demographic data on each assessment area. Consider factors such as:
   a. The retail lending and community development opportunities in the different assessment areas, particularly areas where the need for credit and community development activities is significant;
   b. The level of the institution's activity in the different assessment areas, including in low- and moderate-income areas, designated disaster areas, or distressed or underserved non-metropolitan middle-income geographies designated by the Agencies[1] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;[2]
   c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
   d. The existence of apparent anomalies in the reported data for any particular assessment area(s);
   e. The length of time since the assessment area(s) was last examined using a full scope review;
   f. The institution's prior CRA performance in different assessment areas;
   g. Examiners' knowledge of the same or similar assessment areas; and
   h. Comments from the public regarding the institution's CRA performance.
2. Select one or more assessment areas in each state, and one or more assessment areas in any multi-state MSA, for examination using these procedures. This is required because for interstate institutions, a rating must be assigned for each state where the institution has a branch and for each multi-state MSA/MD where the institution has branches in two or more states that comprise that MSA/MD.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic, and loan data, to the extent available, for each assessment area under review.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), Uniform Bank Performance Reports (UBPRs), annual reports, supervisory reports, and prior CRA evaluations of the institution under examination to help understand the institution's ability and capacity, including any limitations imposed by size, financial condition, or statutory, regulatory, economic or other constraints, to respond to safe and sound opportunities in the assessment area(s) for retail loans, and community

1 The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

2 A list of distressed or undeserved non-metropolitan middle-income geographies will be made available on the FFIEC web site at www.ffiec.gov.

development loans, qualified investments and community development services.

3. Discuss with the institution, and consider, any information the institution may provide about its local community and economy, including community development needs and opportunities, its business strategy, its lending capacity, or information that otherwise assists in the evaluation of the institution.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review any comments received by the institution or the agency since the last CRA examination.
6. By reviewing the public evaluations and other financial data, determine whether any similarly situated institutions (in terms of size, financial condition, product offerings, and business strategy) serve the same or similar assessment area(s) and would provide relevant and accurate information for evaluating the institution's CRA performance. Consider, for example, whether the information could help identify:
   a. Lending and community development opportunities available in the institution's assessment area(s) that are compatible with the institution's business strategy and consistent with safe and sound banking practices;
   b. Constraints affecting the opportunities to make safe and sound retail loans, community development loans, qualified investments, and community development services compatible with the institution's business strategy in the assessment area(s); and
   c. Successful CRA-related product offerings or activities utilized by other lenders serving the same or similar assessment area(s).
7. Document the performance context information, particularly community development needs and opportunities, gathered for use in evaluating the institution's performance.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
   a. Consists of one or more MSAs/MDs or contiguous political subdivisions (e.g., counties, cities, or towns);
   b. Includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans;
   c. Consists only of whole census tracts;
   d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multistate MSA/MD;
   e. Does not reflect illegal discrimination; and
   f. Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the institution's size, branching structure, and financial condition.
2. If an institution's assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

Intermediate Small Institution Lending Test Performance Criteria

Loan-to-Deposit Analysis

1. From data contained in Call Reports or UBPRs, calculate the average loan-to-deposit ratio since the last examination by adding the quarterly loan-to-deposit ratios and dividing by the number of quarters.
2. Evaluate whether the institution's average loan-to-deposit ratio is reasonable in light of information from the performance context including, as applicable, the institution's capacity to lend, the capacity of other similarly situated institutions to lend in the assessment area(s), demographic and economic factors present in the assessment area(s), and the lending opportunities available in the institution's assessment area(s).
3. If the loan-to-deposit ratio does not appear reasonable in light of the performance context, consider whether the number and the dollar amount of loans sold to the secondary market compensate for a low loan-to-deposit ratio or supplement the institution's lending performance.
4. Summarize in work papers conclusions regarding the institution's loan-to-deposit ratio.

Comparison of Credit Extended Inside and Outside of the Assessment Area(s)

1. If available, review HMDA data, automated loan reports, and any other reports that may have been generated by the institution to analyze the extent of lending inside and

outside of the assessment area(s). If a report generated by the institution is used, test the accuracy of the output.

2. If loan reports or data analyzing lending inside and outside of the assessment area(s) are not available or comprehensive, or if their accuracy cannot be verified, use sampling guidelines to select a sample of loans originated, purchased or committed to calculate the percentage (by number and dollar volume) located within the assessment area(s).
3. If the percentage of loans or other lending related activities in the assessment area is less than a majority, then the institution does not meet the standards for "Satisfactory" under this performance criterion. In this case, consider information from the performance context, such as information about economic conditions, loan demand, the institution's size, financial condition, branching network, and business strategies when determining the effect of not meeting the standards for satisfactory for this criterion on the overall rating for the institution.
4. Summarize in work papers conclusions regarding the institution's level of lending or other lending related activities inside and outside of its assessment area(s).

Distribution of Credit within the Assessment Area(s)

1. Determine whether the number and income distribution of geographies in the assessment area(s) are sufficient for a meaningful analysis of the geographic distribution of the institution's loans in its assessment area(s).
2. If a geographic distribution analysis of the institution's loans would be meaningful and the necessary geographic information (street address or census tract number) is collected by the institution in the ordinary course of its business, determine the distribution of the institution's loans in its assessment area(s) among low-, moderate-, middle-, and upper-income geographies. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
3. If a geographic analysis of loans in the assessment area(s) is performed, identify groups of geographies, by income categories, in which there is little or no loan penetration. Note that institutions are not expected to lend in every geography.
4. To the extent information about borrower income (individuals) or revenues (businesses) is collected by the institution in the ordinary course of its business, determine the distribution of loans in the assessment area(s) by borrower income and by business revenues. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
5. Identify categories of borrowers by income or business revenue for which there is little or no loan penetration.
6. If an analysis of the distribution of loans among geographies of different income levels would not be meaningful (e.g., very few geographies in the assessment area(s)) or an analysis of lending to borrowers of different income or revenues could not be performed (e.g., income data are not collected for certain loans), consider possible proxies to use for analysis of the institution's distribution of credit. Possibilities include analyzing geographic distribution by street address rather than geography (if data are available and the analysis would be meaningful) or analyzing the distribution by loan size as a proxy for income or revenue of the borrower.
7. If there are categories of low penetration, form conclusions about the reasons for that low penetration. Consider available information from the performance context, including:
   a. Information about the institution's size, branch network, financial condition, supervisory restrictions (if any) and prior CRA record;
   b. Information from discussions with management, loan officers, and members of the community;
   c. Information about economic conditions, particularly in the assessment area(s);
   d. Information about demographic or other characteristics of particular geographies that could affect loan demand, such as the existence of a prison or college; and
   e. Information about other lenders serving the same or similar assessment area(s).
8. Summarize in work papers conclusions concerning the geographic distribution of loans and the distribution of loans by borrower characteristics in the institution's assessment area(s).

Review of Complaints

1. Review all complaints relating to the institution's CRA performance received by the institution (these should all be contained in the institution's public file) and those that were received by its supervisory agency.
2. If there were any complaints, evaluate the institution's record of taking action, if warranted, in response to written complaints about its CRA performance.
3. If there were any complaints, discuss the preliminary findings in this section with management.
4. If there were any complaints, summarize in work papers conclusions regarding the institution's record of taking action, if warranted, in response to written complaints about its CRA performance. Include the total number of complaints and resolutions with examples that illustrate the nature, responsiveness to, and resolution of, the complaints.
5. Discuss the preliminary findings in the lending test section with management.

Lending Test Ratings Matrix — Intermediate Small Institutions

Characteristic	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Loan-to-Deposit Ratio	The loan-to-deposit ratio is more than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is less than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is unreasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.
Assessment Area(s) Concentration	A substantial majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are outside the institution's assessment area(s)	A substantial majority of loans and other lending related activities are outside the institution's assessment area(s)
Geographic Distribution of Loans	The geographic distribution of loans reflects excellent dispersion throughout the assessment area(s).	The geographic distribution of loans reflects reasonable dispersion throughout the assessment area(s).	The geographic distribution of loans reflects poor dispersion throughout the assessment area(s).	The geographic distribution of loans reflects very poor dispersion throughout the assessment area(s).
Borrower's Profile	The distribution of borrowers reflects, given the demographics of the assessment area(s), excellent penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), reasonable penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), very poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.
Response to Substantiated Complaints	The institution has taken noteworthy, creative action in response to substantiated complaints about its performance in meeting assessment	The institution has taken appropriate action in response to substantiate complaints about its performance in meeting assessment area credit needs.	The institution has taken inadequate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution is unresponsive to substantiated complaints about its performance in meeting assessment area credit needs.

Intermediate Small Institution Community Development Test

An institution should appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the institution's capacities, and take reasonable steps to apply its community development resources strategically to meet those needs. The flexibility inherent in the community development test allows intermediate small institutions to focus on meeting the substance of community needs through these activities. Examiners will consider the results of any assessment by the institution of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.

1. Identify the number and amount of the institution's community development loans, qualified investments, and community development services. Obtain this information through discussions with management, HMDA data collected by the institution, as applicable; investment portfolios; any other relevant financial records; and materials available to the public. Include, at the institution's option:
   a. Community development loans, qualified investments, and community development services provided by affiliates, if they are not claimed by any other institution; and
   b. Community development lending by consortia or third parties.
2. Review community development loans, qualified investments, and community development services to verify that they qualify as community development.
3. If the institution participates in community development lending by consortia or third parties, or claims activities provided by affiliates, review records provided to the institution by the consortia or third parties or affiliates to ensure that the community development loans claimed by the institution do not account for more than the institution's share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.
4. Considering the institution's capacity and constraints and other information obtained through the performance context review, form conclusions about:
   a. The number and amount of community development loans and qualified investments;
   b. The extent to which the institution provides community development services, including the provision and availability of services to low- and moderate-income people, including through branches and other facilities in low- and moderate-income areas;
   c. The responsiveness to the opportunities for community development lending, qualified investments, and community development services, considering:
      1) The results of any assessment of community development needs and opportunities provided by the institution;
      2) The examiner's review of performance context information from community, government, civic, and other sources; and
      3) Whether the amount and combination of community development loans, qualified investments, and community development services, along with their qualitative aspects, are responsive to community needs and opportunities.
5. Summarize conclusions regarding the institution's community development performance and retain in the work papers.

Overall Intermediate Small Institution CRA Rating

1. Group the analyses of the assessment areas examined by MSA[3] and non-MSA areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. Summarize conclusions about the institution's performance in each MSA and the non-MSA portion of each state in which an assessment area received a full scope review. If two or more assessment areas in an MSA or in the non-MSA portion of a state received full scope reviews, weigh the different assessment areas considering such factors as:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The retail lending and community development opportunities in each;
   c. The importance of the institution in providing loans and community development activities to each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
3. For assessment areas in MSAs and non-MSA areas that were not examined using these procedures, consider facts and data related to the institution's lending and community development activities to ensure that performance in those assessment areas is not inconsistent with the conclusions based on the assessment areas which received full scope reviews.
4. For institutions operating in only one multi-state MSA or one state, assign one of the four preliminary ratings – "Satisfactory," "Outstanding," "Needs to Improve," or

3 The reference to MSA may also reference MD.

"Substantial Noncompliance" -- in accordance with step 6 below. To determine the relative significance of each MSA and non-MSA area to the institution's preliminary rating, consider:

a. The significance of the institution's activities in each compared to the institution's overall activities;
b. The retail lending and community development opportunities in each;
c. The importance of the institution to each, particularly in light of the number of other institutions and the extent of their activities in each; and
d. Demographic and economic conditions in each.

5. For other institutions, assign one of the four preliminary ratings -- "Satisfactory," "Outstanding," "Needs to Improve," or "Substantial Noncompliance" -- for each state in which the institution has at least one branch and for each multi-state MSA in which the institution has branches in two or more states in accordance with step #6 below. To determine the relative significance of each MSA and the non-MSA area on the institution's preliminary state rating, consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The retail lending and community development opportunities in each;
   c. The importance of the institution in each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
6. Consult the intermediate small institution ratings matrices (lending and community development) and information in work papers to assign a preliminary rating of:
   a. "Satisfactory" if the institution's performance is rated as "Satisfactory" in each test.
   b. "Needs to Improve" or "Substantial Noncompliance," depending upon the degree to which the institution's performance has failed to meet the standards for a "Satisfactory" rating on a test; or
   c. "Outstanding" if the institution is rated an "Outstanding" on both tests; or "Outstanding" on one test and the extent to which the institution meets or exceeds the "Satisfactory" criteria on the other test.
7. For an institution with branches in more than one state or multi-state MSA, assign a preliminary rating to the institution as a whole taking into account the institution's record in different states or multi-state MSAs by considering:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The retail lending and community development opportunities in each;
   c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.

Community Development Test Ratings Matrix—
Intermediate Small Institutions

Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
The institution's community development performance demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution's capacity and the need and availability of such opportunities for community development in the institution's assessment area(s).	The institution's community development performance demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services as appropriate, considering the institution's capacity and the need and availability of such opportunities for community development in the institution's assessment area(s).	The institution's community development performance demonstrates poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution's capacity and the need and availability of such opportunities for community development in the institution's assessment area(s).	The institution's community development performance demonstrates very poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution's capacity and the need and availability of such opportunities for community development in the institution's assessment area(s).

8. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices should lower the institution's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA. If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans were considered as part of the institution's lending performance, was found, consider:
   a. The nature, extent, and strength of the evidence of the practices;
   b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
   c. Any corrective action that the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
   d. Any other relevant information.
9. Assign a final rating for the institution as a whole and, if applicable, each state in which the institution has at least one branch and each multi-state MSA in which it has branches in two or more states, considering:
   a. The institution's preliminary rating; and
   b. Any evidence of discriminatory or other illegal credit practices.
10. Discuss conclusions with management.
11. Write an evaluation of the institution's performance for the examination report and the public evaluation.
12. Prepare recommendations for a supervisory strategy and for matters that require attention or follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file(s) in the main office and in each state contain:
   a. All written comments from the public relating to the institution's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
   b. The institution's most recent CRA Performance Evaluation;
   c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
   d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;
   e. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between those locations;
   f. The institution's loan-to-deposit ratio for each quarter of the prior calendar year;
   g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination; and
   h. HMDA Disclosure Statements for the prior two calendar years for the institution and for each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable.
3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

(This page intentionally left blank.)

Large Bank

The large institution performance criteria – the Lending, Investment, and Service Tests – cover all institutions with assets of $1 billion or more (as of December 31 of both of the prior two calendar years) unless they requested designation and received approval as wholesale or limited-purpose institutions or have been approved for evaluation under a strategic plan.

As under the streamlined small institution procedures, examiners are expected to exercise judgment and common sense to minimize the burden imposed by the examination process, consistent with a complete and accurate assessment of performance. Therefore, for example, examiners may be able to use economic and demographic data analyzed in an examination of an institution in examinations of other institutions serving the same or similar assessment areas. Community contacts may also be combined to cover more than one institution in a given market. In cases where an institution has analyzed its CRA performance, examiners may use those analyses, after verifying their accuracy and reliability, and should supplement those analyses when questions are raised. Examiners should consider any performance related information offered by an institution, and should request information called for by examination procedures.

Large institutions are required to collect and report certain loan data relative to small business, small farm, and community development loans. The existence of those data in automated form will permit examiners to conduct much of the necessary analysis prior to the on-site examination and thereby reduce any disruptions caused by the presence of examiners at the institution.

Examination Procedures for Large Institutions

Examination Scope

For institutions (interstate and intrastate) with more than one assessment area, identify assessment areas for a full scope review. A full scope review is accomplished when examiners complete all of the procedures for an assessment area. For interstate institutions, a minimum of one assessment area from each state, and a minimum of one assessment area from each multistate metropolitan statistical area/metropolitan division (MSA/MD), must be reviewed using the full scope examination procedures.

1. Review prior CRA performance evaluations, available community contact materials, HMDA and CRA performance data including the institution's lending, investment, and service activities by assessment area, the lending of other lenders in those markets, and demographic information from those markets.
2. Select assessment areas for full scope review by considering the factors below.
   a. The lending, investment, and service opportunities in the different assessment areas, particularly areas where the need for bank credit, investments and services is significant;
   b. The level of the institution's lending, investment, and service activity in the different assessment areas, including in low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies[1] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;[2]
   c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
   d. Comments and feedback received from community groups and the public regarding the institution's CRA performance;
   e. The size of the population;
   f. The existence of apparent anomalies in the reported CRA or HMDA data for any particular assessment area(s);
   g. The length of time since the assessment area(s) was last examined using a full scope review;
   h. The institution's prior CRA performance in different assessment areas;
   i. Examiners' knowledge of the same or similar assessment areas; and
   j. Issues raised during CRA examinations of other institutions and prior community contacts in the

1 The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency

2 A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

institution's assessment areas or similar assessment areas.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic, and loan data, to the extent available, for each assessment area under review. Compare the data to similar data for the MSA/MD, county, or state to determine how any similarities or differences will help in evaluating lending, investment, and service opportunities and community and economic conditions in the assessment area. Also consider whether the area has housing costs that are particularly high given area median income.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), annual reports, supervisory reports, and prior CRA evaluations of the institution under examination to help understand the institution's ability and capacity, including any limitations imposed by size, financial condition, or statutory, regulatory, economic or other constraints, to respond to safe and sound opportunities in the assessment area(s) for retail loans, and community development loans, investments and services.
3. Discuss with the institution, and consider, any information the institution may provide about its local community and economy, including community development needs and opportunities, its business strategy, its lending capacity, or information that otherwise assists in the evaluation of the institution.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review the institution's public file and any comments received by the institution or the agency since the last CRA performance evaluation for information that assists in the evaluation of the institution.
6. By reviewing public evaluations and other financial data, determine whether any similarly situated institutions (in terms of size, financial condition, product offerings, and business strategy) serve the same or similar assessment area(s) and would provide relevant and accurate information for evaluating the institution's CRA performance. Consider, for example, whether the information could help identify:
   a. Lending and community development opportunities available in the institution's assessment area(s) that are compatible with the institution's business strategy and consistent with safe and sound banking practices;
   b. Constraints affecting the opportunities to make safe and sound retail loans, community development loans, qualified investments and community development services compatible with the institution's business strategy in the assessment area(s); and
   c. Successful CRA-related product offerings or activities utilized by other lenders serving the same or similar assessment area(s).
7. Document the performance context information, particularly community development needs and opportunities, gathered for use in evaluating the institution's performance.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
   a. Consists of one or more MSAs/MDs or contiguous political subdivisions (i.e., counties, cities, or towns);
   b. Includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans;
   c. Consists only of whole census tracts;
   d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is in a multi-state MSA/MD;
   e. Does not reflect illegal discrimination; and
   f. Does not arbitrarily exclude any low- or moderate-income area(s) taking into account the institution's size, branching structure, and financial condition.
2. If the assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

Lending, Investment, and Service Tests for Large Retail Institutions

Lending Test

1. Identify the institution's loans to be evaluated by reviewing:

a. The most recent HMDA and CRA Disclosure Statements, the interim HMDA LAR, and any interim CRA loan data collected by the institution;

b. A sample of consumer loans if consumer lending represents a substantial majority of the institution's business so that an accurate conclusion concerning the institution's lending record could not be reached without a review of consumer loans; and

c. Any other information the institution chooses to provide, such as small business loans secured by non-farm residential real estate, home equity loans not reported for HMDA, unfunded commitments, any information on loans outstanding, and loan distribution analyses conducted by or for the institution, including any explanations for identified concerns or actions taken to address them.

2. Test a sample of loan files to verify the accuracy of data collected and/or reported by the institution. In addition, ensure that:

a. Affiliate loans reported by the institution are not also attributed to the lending record of another affiliate subject to CRA. This can be accomplished by requesting the institution to identify how loans are attributed and how it ensures that all the loans within a given lending category (e.g., small business loans, home purchase loans, motor vehicle, credit card, home equity, other secured, and other unsecured loans) in a particular assessment area are reported for all of the institution's affiliates if the institution elects to count any affiliate loans;

b. Loans reported as community development loans (including those originated or purchased by consortia or third parties) meet the definition of community development loans. Determine whether community development loans benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Except for multi-family loans, ensure that community development loans have not also been reported by the institution or an affiliate as HMDA, small business or farm, or consumer loans. Review records provided to the institution by consortia or third parties or affiliates to ensure that the amount of the institution's third party or consortia or affiliate lending does not account for more than the institution's percentage share (based on the level of its participation or investment) of the total loans originated by the consortia, third parties, or affiliates; and

c. All consumer loans in a particular loan category have been included when the institution collects and maintains the data for one or more loan categories and has elected to have the information evaluated.

3. Identify the volume, both in number and dollar amount, of each type of loan being evaluated that the institution has made or purchased within its assessment area. Evaluate the institution's lending volume considering the institution's resources and business strategy and other information from the performance context, such as population, income, housing, and business data. Note whether the institution conducts certain lending activities in the institution and other activities in an affiliate in a way that could inappropriately influence an evaluation of borrower or geographic distribution.

4. Review any analyses prepared by or for and offered by the institution for insight into the reasonableness of the institution's geographic distribution of lending. Test the accuracy of the data and determine if the analyses are reasonable. If areas of low or no penetration were identified, review explanations and determine whether action was taken to address disparities, if appropriate.

5. Supplement with an independent analysis of geographic distribution as necessary. As applicable, determine the extent to which the institution is serving geographies in each income category and whether there are conspicuous gaps unexplained by the performance context. Conclusions should recognize that institutions are not required to lend in every geography. The analysis should consider:

a. (Excluding affiliate lending) the number, dollar amount, and percentage of the institution's loans located within any of its assessment areas, as well as the number, dollar amount, and percentage of the institution's loans located outside any of its assessment areas;

b. The number, dollar amount, and percentage of each type of loan in the institution's portfolio in each geography, and in each category of geography (low-, moderate-, middle-, and upper-income);

c. The number of geographies penetrated in each income category, as determined in step (b), and the total number of geographies in each income category within the assessment area(s);

d. The number and dollar amount of its home purchase, home refinancing, and home improvement loans, respectively in each geography compared to the number of one-to-four family owner-occupied units in each geography;

e. The number and dollar amount of multi-family loans in each geography compared to the number of multi-family structures in each geography;

f. The number and dollar amount of small business and farm loans in each geography compared to the number of small businesses/farms in each geography; and

g. Whether any gaps exist in lending activity for each income category, by identifying groups of contiguous

geographies that have no loans or those with low penetration relative to the other geographies.

6. If there are groups of contiguous geographies within the institution's assessment area with abnormally low penetration, the examiner may determine if an analysis of the institution's performance compared to other lenders for home mortgage loans (using reported HMDA data) and for small businesses and small farm loans (using data provided by lenders subject to CRA) would provide an insight into the institution's lack of performance in those areas. This analysis is not required, but may provide insight if:
   a. The reported loan category is substantially related to the institution's business strategies;
   b. The area under analysis substantially overlaps the institution's assessment area(s);
   c. The analysis includes a sufficient number and volume of transactions, and an adequate number of lenders with assessment area(s) substantially overlapping the institution's assessment area(s); and
   d. The assessment area data is free from anomalies that can cause distortions such as dominant lenders that are not subject to the CRA, a lender that dominates a part of an area used in calculating the overall lending, or there is an extraordinarily high level of performance, in the aggregate, by lenders in the institution's assessment area(s).
7. Using the analysis from step #6, form a conclusion as to whether the institution's abnormally low penetration in certain areas should constitute a negative consideration under the geographic distribution performance criteria of the lending test by considering:
   a. The institution's share of reported loans made in low- and moderate-income geographies versus its share of reported loans made in middle- and upper-income geographies within the assessment area(s);
   b. The number of lenders with assessment area(s) substantially overlapping the institution's assessment area(s);
   c. The reasons for penetration of these areas by other lenders, if any, and the lack of penetration by the institution being examined developed through discussions with management and the community contact process;
   d. The institution's ability to serve the subject area in light of (i) the demographic characteristics, economic condition, credit opportunities and demand; and (ii) the institution's business strategy and its capacity and constraints;
   e. The degree to which penetration by the institution in the subject area in a different reported loan category compensates for the relative lack of penetration in the subject area; and
   f. The degree to which penetration by the institution in other low- and moderate-income geographies within the assessment area(s) in reported loan categories compensates for the relative lack of penetration in the subject area.
8. Review any analyses prepared by or for and offered by the institution for insight into the reasonableness of the institution's distribution of lending by borrower characteristics. Test the accuracy of the data and determine if the analyses are reasonable. If areas of low or no penetration were identified, review explanations and determine whether action was taken to address disparities, if appropriate.
9. Supplement with an independent analysis of the distribution of the institution's lending within the assessment area by borrower characteristics as necessary and applicable. Consider factors such as:
   a. The number, dollar amount, and percentage of the institution's total home mortgage loans and consumer loans, if included in the evaluation, to low-, moderate-, middle-, and upper-income borrowers;
   b. The percentage of the institution's total home mortgage loans and consumer loans, if included in the evaluation, to low-, moderate-, middle-, and upper-income borrowers compared to the percentage of the population within the assessment area who are low-, moderate-, middle-, and upper-income;
   c. The number and dollar amount of small loans originated to businesses or farms by loan size of less than $100,000; at least $100,000 but less than $250,000; and at least $250,000 but less than or equal to $1,000,000;
   d. The number and amount of the small loans to businesses or farms that had annual revenues of less than $1 million compared to the total reported number and amount of small loans to businesses or farms; and
   e. If the institution adequately serves borrowers within the assessment area(s), whether the distribution of the institution's lending outside of the assessment area based on borrower characteristics would enhance the assessment of the institution's overall performance.
10. Review data on the number and amount of the institution's community development loans. Using information obtained in the performance context procedures, especially with regard to community credit needs and institutional capacity, evaluate the extent, innovativeness, and complexity of community development lending to determine:
    a. The extent to which community development lending opportunities have been available to the institution;

b. The institution's responsiveness to the opportunities for community development lending; and

c. The extent of leadership the institution has demonstrated in community development lending.

11. Evaluate whether the institution's performance under the lending test is enhanced by offering innovative loan products or products with more flexible terms to meet the credit needs of low-and moderate-income individuals or geographies. Consider:

a. The degree to which the loans serve low- and moderate-income creditworthy borrowers in new ways or loans serve groups of creditworthy borrowers not previously served by the institution; and

b. The success of each product, including number and dollar amount of loans originated during the review period.

12. Discuss with management the preliminary findings in this section.

13. Summarize your conclusions regarding the institution's lending performance under the following criteria:

a. Lending activity;

b. Geographic distribution;

c. Borrower characteristics;

d. Community development lending; and

e. Use of innovative or flexible lending practices.

14. Prepare comments for the public evaluation and the examination report.

Investment Test

1. Identify qualified investments by reviewing the institution's investment portfolio, and at the institution's option, its affiliate's investment portfolio. As necessary, obtain a prospectus, or other information that describes the investment(s). This review should encompass qualified investments that were made since the previous examination (including those that have been sold or have matured) and may consider qualified investments made prior to the previous examination still outstanding. Also consider qualifying grants, donations, or in-kind contributions of property since the last examination that are for community development purposes.

2. Evaluate investment performance by determining:

a. Whether the investments benefit the institution's assessment area(s) or a broader statewide or regional geographic area that includes the institution's assessment area(s);

b. Whether the investments have been considered under the lending and service tests;

c. Whether an affiliate's investments, if considered, have been claimed by another institution;

d. The dollar amount of investments made to entities that are in or serve the assessment area, in relation to the institution's capacity and constraints, and assessment area characteristics and needs;

e. The use of any innovative or complex investments, in particular those that are not routinely provided by other investors; and

f. The degree to which investments serve low- and moderate-income areas or individuals, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies, and are responsive to available opportunities for qualified investments.

3. Discuss with management the preliminary findings in this section.

4. Summarize conclusions about the institution's investment performance after considering:

a. The number and dollar amount of qualified investments;

b. The innovativeness and complexity of qualified investments;

c. The degree to which these types of investments are not routinely provided by other private investors; and

d. The responsiveness of qualified investments to available opportunities.

5. Write comments for the public evaluation and the examination report.

Service Test

Retail Banking Services

1. Determine from information available in the institution's Public File:

a. The distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies in the institution's assessment area(s); and

b. Banking services, including hours of operation and available loan and deposit products.

2. Obtain the institution's explanation for any material differences in the hours of operations of, or services available at, branches within low-, moderate-, middle-, and upper-income geographies in the institution's assessment area(s).

3. Evaluate the institution's record of opening and closing branch offices since the previous examination and information that could indicate whether changes have had a positive or negative effect, particularly on low- and moderate-income geographies or individuals.

4. Evaluate the accessibility and use of alternative systems for delivering retail banking services, (e.g., proprietary and non-proprietary ATMs, loan production offices (LPOs), banking by telephone or computer, and bank-at-work or by-

mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals.

5. Assess the quantity, quality and accessibility of the institution's service-delivery systems provided in low-, moderate-, middle-, and upper-income geographies. Consider the degree to which services are tailored to the convenience and needs of each geography (e.g., extended business hours, including weekends, evenings or by appointment, providing bi-lingual services in specific geographies, etc.).

Community Development Services

6. Identify the institution's community development services, including at the institution's option, services through affiliates, through discussions with management and a review of materials available from the public. Determine whether the services:
   a. Qualify under the definition of community development services;
   b. Benefit the assessment area(s) or a broader statewide or regional area encompassing the institution's assessment area(s); and
   c. If provided by affiliates of the institution, are not claimed by other affiliated institutions.
7. Evaluate in light of information gathered through the performance context procedures:
   a. The extent of community development services offered and used;
   b. Their innovativeness, including whether they serve low- or moderate-income customers in new ways or serve groups of customers not previously served; and
   c. The degree to which they serve low- or moderate-income areas or individuals and their responsiveness to available opportunities for community development services.
8. Discuss with management the preliminary findings.
9. Summarize conclusions about the institution's system for delivering retail banking and community development services, considering:
   a. The distribution of branches among low-, moderate-, middle-, and upper-income geographies;
   b. The institution's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;
   c. The availability and effectiveness of alternative systems for delivering retail banking services;
   d. The extent to which the institution provides community development services;
   e. The innovativeness and responsiveness of community development services; and
   f. The range and accessibility of services provided in low-, moderate-, middle-, and upper-income geographies.
10. Write comments for the public evaluation and the examination report.

Ratings

1. Group the analyses of the assessment areas examined by MSA[3] and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multistate MSA, group the assessment areas that are in that multistate MSA.
2. Summarize conclusions regarding the institution's performance in each MSA and nonmetropolitan portion of each state in which an assessment area was examined using these procedures. If two or more assessment areas in an MSA or in a nonmetropolitan portion of a state were examined using these procedures, determine the relative significance of the institution's performance in each assessment area by considering:
   a. The significance of the institution's lending, qualified investments, and lending-related services in each compared to the institution's overall activities;
   b. The lending, investment, and service opportunities in each;
   c. The significance of the institution's lending, qualified investments, and lending-related services for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
3. Evaluate the institution's performance in those assessment area(s) not selected for examination using the full scope procedures.
   a. Revisit the demographic and lending, investment, and service data considered in scoping the examination. Also, consider the institution's operations (branches, lending portfolio mix, etc.) in the assessment area;
   b. Through a review of the public file(s), consider any services that are customized to the assessment area; and
   c. Consider any other information provided by the institution (e.g., CRA self-assessment) regarding its performance in the area.
4. For MSAs, and the nonmetropolitan portion of the state, where one or more assessment areas were examined using the full scope procedures, ensure that performance in the assessment areas not examined using the full scope procedures is consistent with the conclusions based on the

3 The reference to MSA may also reference MD.

assessment areas examined in step 2, above. Select one of the following options for inclusion in the public evaluation:

a. The institution's [lending, investment, service] performance in [the assessment area/these assessment areas] is consistent with the institution's [lending, investment, service] performance in the assessment areas within [the MSA/non-metropolitan portion of the state] that were reviewed using the examination procedures; and

b. The institution's [lending/investment/service] performance in [the assessment area/these assessment areas] [exceeds/is below] the [lending/investment/service] performance in the assessment areas within [the MSA/nonmetropolitan portion of the state] that were reviewed using the examination; however, it does not change the conclusion for the [MSA/nonmetropolitan portion of the state].

5. For MSA, and nonmetropolitan portions of the state, where no assessment area was examined using the full scope procedures, form a conclusion regarding the institution's lending, investment, and service performance in the assessment area(s). When there are several assessment areas in the MSA, or the nonmetropolitan portion of the state, form a conclusion regarding the institution's performance in the MSA, or the nonmetropolitan portion of the state. Determine the relative significance of the institution's performance in each assessment area within the MSA, or the nonmetropolitan portion of the state, by considering:

   a. The significance of the institution's lending, qualified investments, and lending-related services in each compared to the institution's overall activities; and

   b. Demographic and economic conditions in each.

   Also, select one of the following options for inclusion in the public evaluation:

   a. The institution's [lending, investment, service] performance in [the assessment area/these assessment areas] is consistent with the institution's [lending, investment, service] performance [overall/in the state]; and

   b. The institution's [lending/investment/service] performance in [the assessment area/these assessment areas] [exceeds/is below] the [lending/investment/service] performance for the [institution/state], however, it does not change the [institution's/state] rating.

6. To determine the relative significance of each MSA and nonmetropolitan area to the institution's overall performance (institutions operating in one state) or statewide or multistate MSA performance (institutions operating in more that one state), consider:

   a. The significance of the institution's lending, qualified investments, and lending-related services in each compared to the institution's overall activities;

   b. The lending, investment, and service opportunities in each;

   c. The significance of the institution's lending, qualified investments, and lending-related services for each, particularly in light of the number of other institutions and the extent of their activities in each; and

   d. Demographic and economic conditions in each.

7. Using the Component Test Ratings chart below, assign component ratings that reflect the institution's lending, investment, and service performance. In the case of an institution with branches in just one state, one set of component ratings will be assigned to the institution. In the case of an institution with branches in two or more states and multistate MSAs, component ratings will be assigned for each state or multistate MSA reviewed.

Component Test Ratings	Points for Lending	Points for Investment	Points for Service
Outstanding	12 points	6 points	6 points
High Satisfactory	9 points	4 points	4 points
Low Satisfactory	6 points	3 points	3 points
Needs to Improve	3 points	1 point	1 point
Substanial Noncompliance	0 points	0 points	0 points

8. Assign a preliminary composite rating for the institutions operating in only one state and a preliminary rating for each state or multistate MSA reviewed for institutions operating in more than one state. In assigning the rating, sum the numerical values of the component test ratings for the lending, investment and service tests and refer to the chart, below. No institution, however, may receive an assigned rating of "Satisfactory" or higher unless it receives a rating of at least "Low Satisfactory" on the lending test. In addition, an institution's assigned rating can be no more than three times the score on the lending test.

Composite Rating	Points Needed
Outstanding	20 points or over
Satisfactory	11 through 19 points
Needs to Improve	5 through 10 points
Substanial Noncompliance	0 through 4 points

9. Consider an institution's past performance if the prior rating was "Needs to Improve." If the poor performance has continued, an institution could be considered for a "Substantial Noncompliance" rating.
10. For institutions with branches in more than one state or multistate MSA, assign a preliminary overall rating. To determine the relative importance of each state and multistate MSA to the institution's overall rating, consider:
    a. The significance of the institution's lending, qualified investments, and lending-related services in each compared to the institution's overall activities;
    b. The lending, investment, and service opportunities in each;
    c. The significance of the institution's lending, qualified investments, and lending-related services for each, particularly in light of the number of other institutions and the extent of their activities in each; and
    d. Demographic and economic conditions in each.
11. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution's preliminary overall CRA rating, or the preliminary CRA rating for a state or multistate MSA.[4] If evidence of discrimination or other illegal credit practices by the institution in any geography, or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance, was found, consider the following:
    a. The nature, extent, and strength of the evidence of the practices;
    b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
    c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
    d. Any other relevant information.
12. Assign final overall rating to the institution, considering the preliminary rating and any evidence of discriminatory or other illegal credit practices, and discuss conclusions with management.
13. Write comments and conclusions, and create charts and tables reflecting area demographics, the institution's operation and its lending, investment and service activity in each assessment area for inclusion in the public evaluation and examination report.
14. Prepare recommendations for supervisory strategy and matters that require attention for follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files will be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations; its branching structure and changes to it since its last examination; complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine, as needed, whether branches display an accurate public notice in their lobbies and the file(s) in the main office and in each state contains:
    a. All written comments from the public relating to the institution's CRA performance and responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
    b. The institution's most recent CRA Public Performance Evaluation;
    c. A map of each assessment area showing its boundaries, and on the map or in a separate list, the geographies contained within the assessment area;
    d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, and their street addresses and geographies;
    e. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between these locations;

4 "Evidence of discriminatory or other illegal credit practices" includes, but is not limited to: (a) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act; (b) Violations of the Home Ownership and Equity Protection Act; (c) Violations of section 5 of the Federal Trade Commission Act; (d) Violations of section 8 of the Real Estate Settlement Procedures Act; and (e) Violations of the Truth in Lending Act regarding a consumer's right of rescission.

f. The institution's CRA disclosure statements for the prior two calendar years;

g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination;

h. The HMDA Disclosure Statement for the prior two calendar years for the institution and for each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable; and

i. If applicable, the number and amount of consumer loans made to the four income categories of borrowers and geographies (low, moderate, middle and upper), and the number and amount located inside and outside of the assessment area(s).

3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

(This page intentionally left blank.)

Wholesale/Limited Purpose Institution

In order to be evaluated under the community development test, an institution must be designated as a wholesale or limited purpose institution following submission of a written request to and approval from its primary regulator. Once an institution has received a designation, it will not normally have to reapply for that designation. The designation will remain in effect until the institution requests that it be revoked or until one year after the agency determines that the institution no longer satisfies the criteria for designation and notifies the institution of this determination.

Wholesale or limited purpose institutions are evaluated on the basis of their:

- Community development lending, qualified investments, or community development services;
- Use of innovative or complex qualified investments, community development loans, or community development services and the extent to which investments are not routinely provided by private investors; and
- Responsiveness to community credit and development needs.

Examiners must be cognizant of the context within which a wholesale or limited purpose institution operates. Examiners should recognize that these institutions may tailor their community development activities based on their own circumstances and the community development opportunities available to them in their assessment areas or the broader statewide or regional areas that include the assessment areas.

Institutions need not engage in all three categories of community development activities to be considered satisfactory under the community development test. Community development loans, investments and services can be directed to a statewide or regional market that includes the institution's assessment area(s) and still qualify for consideration under the community development test as benefiting the assessment area(s). Moreover, if an institution has a satisfactory community development record in its assessment area(s), all community development activities regardless of their locations should be considered.

As with other performance tests, in applying the community development test, examiners should perform only those analyses that are necessary to reach an accurate conclusion about the institution's performance, use all available, reliable information, and avoid duplication of effort to reduce burden.

Examination Procedures for Limited Purpose and Wholesale Institutions

Examination Scope

1. For institutions with more than one assessment area, identify assessment areas for full scope review. In making those selections, review prior performance evaluations, available community contact materials, reported lending data and demographic data on each assessment area and consider factors such as:
   a. The lending, investment, and service activity in the different assessment areas, particularly community development activities;
   b. The lending, investment, and service opportunities available in the different assessment areas, particularly community development opportunities;
   c. The length of time since the assessment area(s) received a full scope review;
   d. The institution's prior CRA performance in different assessment areas;
   e. The number of other institutions in the assessment areas and the importance of the institution under examination in addressing community development needs in the different assessment areas, particularly in areas with a limited number of financial service providers;
   f. The existence of apparent anomalies in the reported HMDA data for any particular assessment area;
   g. Examiners' knowledge of the same or similar assessment areas; and
   h. Comments from the public regarding the institution's CRA performance.
2. For interstate institutions, a rating must be assigned for each state where the institution has a branch and for each multi-state metropolitan statistical areas/metropolitan divisions (MSA/MD) where the institution has branches in two or more of the states that comprise the multi-state MSA/MD. Select one or more assessment areas in each state for examination using the full scope procedures.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic, and loan data, to the extent available, for each assessment area under review. Consider, among other things, whether housing costs are particularly high in relation to area median income.
2. Consider any information the institution may provide on its local community and economy and its community development lending, qualified investment, and community development service capacity or that otherwise assists in the evaluation of the institution's community development activities.

3. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution's community development activities. Contact local community, government, or economic development representatives to update or supplement information about community development activities in the assessment area(s) or the broader statewide or regional areas of which the assessment area(s) is a part.
4. Identify barriers, if any, to participation by the institution in local community development activities. For example, evaluate the institution's ability and capacity to help meet the community development needs of its assessment area(s) through a review of the uniform bank performance report (UBPR), the consolidated report of condition (Call Report), annual reports, supervisory reports, prior CRA performance evaluations, and financial information for other wholesale/limited purpose institutions serving approximately the same assessment area(s).
5. Review the institution's public file and any comments received by the institution or the agency since the last CRA performance evaluation for information that assists in the evaluation of the institution.
6. Document the performance context information gathered for use in evaluating the institution's CRA record.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
   a. Consists of one or more MSAs/MDs or contiguous political subdivisions (i.e., counties, cities, or towns) where the institution has its main office, branches, and deposit-taking ATMs;
   b. Consists only of whole census tracts;
   c. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multistate MSA/MD;
   d. Does not reflect illegal discrimination; and
   e. Does not arbitrarily exclude any low- or moderate-income area(s) taking into account the institution's size and financial condition.
2. If the assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

Community Development Test

1. Identify the number and amount of the institution's community development loans, (originations and purchases of loans and any other data the institution chooses to provide), qualified investments, and community development services. Obtain this information through discussions with management, HMDA data collected by the institution, as applicable; investment portfolios; any other relevant financial records; and materials available to the public. Include, at the institution's option:
   a. Community development loans, qualified investments, and community development services provided by affiliates, if they are not claimed by any other institution; and
   b. Community development lending by consortia or third parties.
2. Review community development loans, qualified investments, and community development services to verify that they qualify as community development.
3. If the institution participates in community development lending by consortia or third parties, or claims activities provided by affiliates, review records provided to the institution by the consortia or third parties or affiliates to ensure that the community development loans claimed by the institution do not account for more than the institution's share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.
4. Considering the institution's capacity and constraints and other information obtained through the performance context review, form conclusions about:
   a. The extent, by number and dollar amount of community development loans, services, and qualified investments;
   b. The degree of innovation in community development activities (e.g., serving low- or moderate-income borrowers in new ways or serving groups of creditworthy borrowers not previously served by the institution);
   c. The complexity of those community development activities, such as the use of enhancements or other features specifically designed to expand community development lending;
   d. The responsiveness to the opportunities for community development lending, qualified investments, and community development services; and

e. The degree to which the institution's qualified investments serve needs not routinely provided by other private investors.

5. Summarize conclusions regarding the institution's community development performance and retain in the work papers.

Ratings

1. Review the analyses of the institution's performance in each assessment area examined, considering only those community development activities that benefit the assessment area(s) and the broader statewide or regional area(s) that include the assessment area(s).
2. Group the analyses of the assessment areas examined by MSA[1] and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas in that MSA.
3. Summarize conclusions about the institution's performance in each MSA and the nonmetropolitan portion of each state in which an assessment area was examined using these procedures. If two or more assessment areas in an MSA or in the nonmetropolitan portion of a state were examined using these procedures, determine the relative significance of the institution's performance in each assessment area by considering:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The community development opportunities in each;
   c. The significance of the institution's activities for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
4. For assessment areas in MSAs and nonmetropolitan areas that were not examined, consider facts and data related to the institution's community development lending, investment, and service activities to ensure that performance in those areas is not inconsistent with the conclusions based on the assessment areas examined.
5. Assign a preliminary rating for an institution with operations in one state only using the Community Development Ratings Matrix. For an institution with operations in more than one state or multi-state MSA, assign a preliminary rating for each state, using the Community Development Ratings Matrix. To determine the relative significance of each MSA and nonmetropolitan area to the institution's overall rating (institutions operating in only one state) or state-wide or multi-state MSA rating (institutions operating in more that one state), consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The community development opportunities in each;
   c. The significance of the institution's activities for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
6. For institutions with operations in more than one state or multi-state MSA, assign a preliminary rating for the institution as a whole. To determine the relative significance of each state or multi-state MSA consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The community development opportunities in each;
   c. The significance of the institution's activities for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
7. If the institution is adequately meeting the community development needs of each of its assessment area(s), consider those community development activities, if any, that benefit areas outside of the assessment area(s) or a broader statewide or regional area that includes the assessment area(s). Determine whether those activities enhance the preliminary rating. If so, adjust the rating(s) accordingly.
8. Consider an institution's past performance if the prior rating was "Needs to Improve." If the poor performance has continued, an institution could be considered for a "Substantial Noncompliance" rating.
9. Review the results of the most recent compliance examination and determine whether evidence of discrimination or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution's preliminary composite rating or the preliminary CRA rating for a state or multistate MSA.[2] If evidence of discrimination or other illegal credit practices by the institution in any geography, or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance, was found, consider the following:
   a. The nature, extent, and strength of the evidence of the practices;

1 The reference to MSA may also reference MD.

2 "Evidence of discriminatory or other illegal credit practices" includes, but is not limited to: (a) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act; (b) Violations of the Home Ownership and Equity Protection Act; (c) Violations of section 5 of the Federal Trade Commission Act; (d) Violations of section 8 of the Real Estate Settlement Procedures Act; and (e) Violations of the Truth in Lending Act regarding a consumer's right of rescission.

b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;

c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and

d. Any other relevant information.

10. Assign a final composite rating to the institution, considering the preliminary rating and any evidence of discriminatory or other illegal credit practices, and discuss conclusions with management.

11. Write comments for the public evaluation and examination report.

12. Prepare recommendations for supervisory strategy and matters that require attention for follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.

2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file(s) in the main office and in each state contain:

   a. All written comments from the public relating to the institution's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);

   b. The institution's most recent CRA Performance Evaluation;

   c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;

   d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;

   e. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between those locations;

   f. The institution's CRA Disclosure Statement(s) for the prior two calendar years;

   g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination;

   h. HMDA Disclosure Statements for the prior two calendar years and those of each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable; and

   i. If applicable, the number and dollar amount of consumer loans made to the four income categories of borrowers and geographies (low-, moderate-, middle-, and upper-income), located inside and outside of the assessment area(s).

3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation, and a list of services generally available at its branches, and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

Community Development Ratings Matrix — Wholesale/Limited Purpose Institutions

Community Development Test Characteristic	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Investment, Loan, and Service Activity	The institution has a high level of community development services, or or qualified investments, particularly investments that are not routinely provided by private investors	The institution has an adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors.	The institution has a poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors.	The institution has few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors.
Investment, Loan, and Service Initiatives	The institution extensively uses innovative or complex qualified investments, community development loans, or community development services.	The institution occasionally uses innovative or complex qualified investments, community development loans, or community development services.	The institution rarely uses innovative or complex qualified investments, community development loans, or community development services.	The institution does not use innovative or complex qualified investments, community development loans, or community development services.
Responsiveness to Community Development Needs	The institution exhibits excellent responsiveness to credit and community economic development needs in its assessment area(s).	The institution exhibits adequate responsiveness to credit and community economic development needs in its assessment area(s).	The institution exhibits poor responsiveness to credit and community economic needs in its assessment area(s).	The institution exhibits very poor responsiveness to credit and community economic development needs in its assessment area(s).

(This page intentionally left blank.)

Institutions with Strategic Plans

The regulations permit any institution to develop, and submit for approval by its primary supervisory agency, a strategic plan (Plan) for addressing its responsibilities with respect to CRA. The regulations require that the plan be developed in consultation with members of the public and that it be published for public comment. The plan must contain measurable annual goals. A single plan can contain goals designed to achieve only a "Satisfactory" rating or, at the institution's option, can contain goals designed to achieve a "Satisfactory" rating, as well as goals designed to achieve an "Outstanding" rating.

This approach to addressing an institution's CRA responsibilities presents an opportunity for a very straightforward examination. The first question an examiner should investigate is whether the goals were met. If they were, the appropriate rating should be assigned. The appropriateness of the goals will have already been determined in the process of public comment and agency review and approval. Consequently, further investigation relating to the context of the institution should not be necessary. Obviously, if some or all of the plan's goals were not met, the examiner will be required to evaluate such issues as whether they were substantially met and in doing so will have to exercise some judgment regarding the degree to which they are missed and the causes.

However, the examiner should approach an examination of an institution operating under a plan understanding that part of the purpose for these regulatory provisions was to give the institution significant latitude in designing a program that is appropriate to its own capabilities, business strategies and organizational framework, as well as to the communities that it serves. Consequently, the institution may develop plans for a single assessment area that it serves, for some, but not all, of the assessment areas that it serves, or for all of them. It may develop a plan that incorporates and coordinates the activities of various affiliates. It will be the examiner's challenge to evaluate institutions operating under one plan or a number of plans in a way that accurately reflects the results achieved and that sensibly wraps that evaluation into the overall assessment of the institution.

As with other aspects of the CRA examination, the examiner should first make the greatest use possible of information available from the agencies to evaluate performance under the plan. However, it is likely that some elements of a plan under review will not be reflected in public or other agency data. Consequently, the examiner may, of necessity, have to ask the institution for the data necessary to determine whether it has met its goals. The examiner should do so, to the greatest extent possible, by asking the institution to provide data for review prior to going on-site for the examination. The examiner should also seek to mitigate burden by, wherever possible, using data in the form maintained by the institution.

Examination Procedures for Institutions with Strategic Plans

Examination Scope

1. For institutions with more than one assessment area, identify assessment areas for full scope review. To select one or more assessment areas for full scope review, analyze prior performance evaluations, available community contact materials, reported lending data and demographic data on each assessment area and consider factors such as:
   a. The level of the institution's lending, investment and service activity in the different assessment areas, including low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies[1] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion[2];
   b. The number of other institutions in the different assessment areas and the importance of the institution under examination in meeting credit needs in the different assessment areas, particularly in areas with a limited number of financial service providers;
   c. The existence of apparent anomalies in the reported lending data for any particular assessment area(s);
   d. The time since the assessment area(s) most recently received a full scope examination;
   e. Performance that falls short of plan goals based on a review of available data;
   f. The institution's prior CRA performance in the different assessment areas; and
   g. Comments from the public regarding the institution's CRA performance.
2. For interstate institutions, a rating must be assigned for each state where the institution has a branch and in every multistate MSA where the institution has branches in two or more of the states that comprise that multistate MSA. Select one or more assessment areas in each state for examination using these procedures.

1 The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency

2 A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

Performance Context

1. Review the institution's public file for any comments received by the institution or the agency since the last CRA performance evaluation that assists in evaluating the institution's record of meeting plan goals.
2. Consider any information that the institution provides on its record of meeting plan goals.
3. Contact local community, governmental or economic development representatives to update or supplement information about the institution's record of meeting plan goals.
4. As necessary, consider any information the institution or others may provide on local community and economic conditions that may affect the institution's ability to meet plan goals or otherwise assist in the evaluation of the institution.

Performance Criteria

1. Review the following:
   a. The approved plan and approved amendments;
   b. The agency's approval process files; and
   c. Written comments from the public that the institution or the agency received since the plan became effective.
2. Determine whether the institution achieved its performance goals for each assessment area examined.
   a. Review the plan's measurable annual goals for each performance category and assessment area(s) to be reviewed.
   b. Obtain information and data about the institution's actual performance for the period that has elapsed since the previous examination.
   c. Compare the plan goals for each assessment area reviewed to the institution's actual performance since its last examination in each assessment area reviewed to determine if all of the plan's goals have been met.
3. If any goals were not met, form a conclusion as to whether the plan goals were "substantially met." In doing so, consider the number of unmet goals, the degree to which the goals were not met, the importance of those goals to the plan as a whole, and the reasons why the goals were not met (e.g., economic factors beyond the institution's control).
4. Discuss preliminary findings with management.
5. Summarize conclusions about the institution's performance.

Ratings

These instructions assume that the strategic plan covers all of the institution's assessment areas. If not, the analysis of performance for the assessment area(s) covered by the strategic plan must be combined with the analyses for assessment areas that were subject to other assessment method(s) in order to assign a rating.

1. Group the analyses of the assessment areas examined by MSA[3] and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. If the institution has substantially met its plan goals for a satisfactory rating or, if applicable, an outstanding rating, in all assessment areas reviewed, summarize conclusions about the institution's performance in each MSA and the nonmetropolitan area of each state in which an assessment area was examined using these procedures. Assign the appropriate preliminary rating for the institution and, as applicable, each state or multistate MSA and proceed to Step 6, below.
3. If the institution did not substantially meet its plan goals in each assessment area, check to determine if the institution elected in its plan to be evaluated under an alternate assessment method.
   a. If the institution did not elect in the plan to be evaluated under an alternate assessment method, assign a "Needs to Improve" or "Substantial Noncompliance" rating to those assessment areas in which plan goals were not substantially met, depending on the number of goals missed, the extent to which they were missed, and their importance to the plan overall.
   b. If the institution elected in its plan to be evaluated under an alternate assessment method, perform the appropriate procedures to evaluate and rate the institution's performance in those assessment areas in which the institution did not meet plan goals.
4. For institutions operating in multiple assessment areas, determine the relative importance of the assessment areas reviewed in forming conclusions for each MSA and the nonmetropolitan area within each state and for any multistate MSA where the institution has branches in two or more states. In making that determination, consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending, service, and investment opportunities in each;
   c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
5. For an institution operating in multiple MSAs or nonmetropolitan areas in one or more states or multi-state

3 The reference to MSA may also reference metropolitan division (MD).

MSAs, assign a preliminary rating for each state and multi-state MSA. To determine the relative significance of each MSA and nonmetropolitan area to the rating in a state, consider:

a. The significance of the institution's activities in each compared to the institution's overall activities;
b. The lending, service, and investment opportunities in each;
c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and
d. Demographic and economic conditions in each.

6. For institutions with operations in more than one state, assign a preliminary overall rating. In determining the relative significance of the institution's performance in each state or multistate MSA to its overall rating consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending, service, and investment opportunities in each;
   c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
7. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA.[4] If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans were considered as part of the institution's lending performance, was found, consider:
   a. The nature, extent, and strength of the evidence of the practices;
   b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
   c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
   d. Any other relevant information.
8. Discuss conclusions with management and assign a final rating to the institution and state or multi-state MSA ratings, as applicable, considering the preliminary rating and any evidence of discrimination and other illegal credit practices.
9. Write comments for the public evaluation and the examination report.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file available in the main office and in each state contains:
   a. A copy of the approved strategic plan;
   b. All written comments from the public relating to the institution's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
   c. The institution's most recent CRA Performance Evaluation;
   d. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
   e. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;
   f. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between those locations;
   g. The institution's CRA Disclosure Statement(s) for the prior two calendar years;

4 "Evidence of discriminatory or other illegal credit practices" includes, but is not limited to: (a) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act; (b) Violations of the Home Ownership and Equity Protection Act; (c) Violations of section 5 of the Federal Trade Commission Act; (d) Violations of section 8 of the Real Estate Settlement Procedures Act; and (e) Violations of the Truth in Lending Act regarding a consumer's right of rescission.

h. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination;

i. HMDA Disclosure Statements for the prior two calendar years for the institution and for each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable;

j. The number and dollar amount of consumer loans, for large banks, if applicable; and

k. The loan-to-deposit ratio, for small institutions.

3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

CRA Ratings System

Introduction

In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in the regulation, in accordance with Section 345.21 and Section 345.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices. A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate profile as follows.

Ratings Definitions

The following ratings definitions are to be used.

"Outstanding" An institution in this group has an outstanding record of helping to meet the credit needs of its assessment area, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

"Satisfactory" An institution in this group has a satisfactory record of helping to meet the credit needs of its assessment area, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

"Needs to Improve" An institution in this group needs to improve its overall record of helping to meet the credit needs of its assessment area, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

"Substantial Noncompliance" An institution in this group has a substantially deficient record of helping to meet the credit needs of its assessment area, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Banks Evaluated under the Lending, Investment, and Service Tests

Lending Performance Rating. The FDIC assigns each bank's lending performance one of the five following ratings:

- **Outstanding**. The FDIC rates a bank's lending performance "outstanding" if, in general, it demonstrates:
  - Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
  - A substantial majority of its loans are made in its assessment area(s);
  - An excellent geographic distribution of loans in its assessment area(s);
  - An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
  - An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It is a leader in making community development loans.
- **High Satisfactory**. The FDIC rates a bank's lending performance "high satisfactory" if, in general, it demonstrates:
  - Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in its assessment area(s);
  - A high percentage of its loans are made in its assessment area(s);
  - A good geographic distribution of loans in its assessment area(s);
  - A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
  - A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It has made a relatively high level of community development loans.
- **Low Satisfactory**. The FDIC rates a bank's lending performance "low satisfactory" if, in general, it demonstrates:
  - Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and

amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
  - An adequate percentage of its loans are made in its assessment area(s);
  - An adequate geographic distribution of loans in its assessment area(s);
  - An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
  - An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It has made an adequate level of community development loans.
- **Needs to Improve**. The FDIC rates a bank's lending performance "needs to improve" if, in general, it demonstrates:
  - Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in its assessment area(s);
  - A small percentage of its loans are made in its assessment area(s);
  - A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);
  - A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
  - A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It has made a limited number of community development loans.
- **Substantial Noncompliance**. The FDIC rates a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:
  - A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
  - A very small percentage of its loans are made in its assessment area(s);
  - A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);
  - A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
  - A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It has made few, if any, community development loans.

Investment Performance Rating.

The FDIC assigns each bank's investment performance one of the five following ratings.

- **Outstanding**. The FDIC rates a bank's investment performance "outstanding" if, in general, it demonstrates:
  - An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;
  - Extensive use of innovative or complex qualified investments; and
  - Excellent responsiveness to credit and community development needs.
- **High Satisfactory**. The FDIC rates a bank's investment performance "high satisfactory" if, in general, it demonstrates:
  - A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

- Significant use of innovative or complex qualified investments; and
- Good responsiveness to credit and community development needs.

- **Low Satisfactory**. The FDIC rates a bank's investment performance "low satisfactory" if, in general, it demonstrates:
  - An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;
  - Occasional use of innovative or complex qualified investments; and
  - Adequate responsiveness to credit and community development needs.
- **Needs to Improve**. The FDIC rates a bank's investment performance "needs to improve" if, in general, it demonstrates:
  - A poor level of qualified investments, particularly those that are not routinely provided by private investors;
  - Rare use of innovative or complex qualified investments; and
  - Poor responsiveness to credit and community development needs.
- **Substantial Noncompliance**. The FDIC rates a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:
  - Few, if any, qualified investments, particularly those that are not routinely provided by private investors;
  - No use of innovative or complex qualified investments; and
  - Very poor responsiveness to credit and community development needs.

Service Performance Rating.

The FDIC assigns each bank's service performance one of the five following ratings:

- **Outstanding**. The FDIC rates a bank's service performance "outstanding" if, in general, the bank demonstrates:
  - Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);
  - To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;
  - Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and
  - It is a leader in providing community development services.
- **High Satisfactory**. The FDIC rates a bank's service performance "high satisfactory" if, in general, the bank demonstrates:
  - Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);
  - To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
  - Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
  - It provides a relatively high level of community development services.
- **Low Satisfactory**. The FDIC rates a bank's service performance "low satisfactory" if, in general, the bank demonstrates:
  - Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);
  - To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
  - Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
  - It provides an adequate level of community development services.
- **Needs to Improve**. The FDIC rates a bank's service performance "needs to improve" if, in general, the bank demonstrates:
  - Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

- To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;
- Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate- income geographies or low- or moderate-income individuals; and
- It provides a limited level of community development services.

- **Substantial Noncompliance**. The FDIC rates a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:
  - Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;
  - To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;
  - Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and
  - It provides few, if any, community development services.

Wholesale or Limited-Purpose Banks

The FDIC assigns each wholesale or limited-purpose bank's community development performance one of the four following ratings:

- **Outstanding**. The FDIC rates a wholesale or limited-purpose bank's community development performance "outstanding" if, in general, it demonstrates:
  - A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - Extensive use of innovative or complex qualified investments, community development loans, or community development services; and
  - Excellent responsiveness to credit and community development needs in its assessment area(s).

- **Satisfactory**. The FDIC rates a wholesale or limited-purpose bank's community development performance "satisfactory" if, in general, it demonstrates:
  - An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - Occasional use of innovative or complex qualified investments, community development loans, or community development services; and
  - Adequate responsiveness to credit and community development needs in its assessment area(s).

- **Needs to Improve**. The FDIC rates a wholesale or limited-purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:
  - A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - Rare use of innovative or complex qualified investments, community development loans, or community development services; and
  - Poor responsiveness to credit and community development needs in its assessment area(s).

- **Substantial Noncompliance**. The FDIC rates a wholesale or limited-purpose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:
  - Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - No use of innovative or complex qualified investments, community development loans, or community development services; and
  - Very poor responsiveness to credit and community development needs in its assessment area(s).

Banks Evaluated under the Small Bank Performance Standards

Lending Test Ratings.

- Eligibility for a ***Satisfactory*** lending test rating. The FDIC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:
  - A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the

secondary markets and community development loans and qualified investments;

- A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);
- A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);
- A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and
- A reasonable geographic distribution of loans given the bank's assessment area(s).

- Eligibility for an ***Outstanding*** lending test rating. A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."
- ***Needs to Improve*** or ***Substantial Noncompliance*** ratings. A small bank also may receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

Community Development Test Ratings for Intermediate Small Banks.

- Eligibility for a ***Satisfactory*** community development test rating. The FDIC rates a an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).
- Eligibility for an ***Outstanding*** community development test rating. The FDIC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).
- ***Needs to Improve*** or ***Substantial Noncompliance*** ratings. An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

Overall Rating.

- Eligibility for a ***Satisfactory*** overall rating. No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of a least "satisfactory" on both the lending test and the community development test.
- Eligibility for an ***Outstanding*** overall rating. An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."
- A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the FDIC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).
- ***Needs to Improve*** or ***Substantial Noncompliance*** overall ratings. A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

Strategic Plan Assessments

The FDIC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

- ***Satisfactory***. If the bank substantially achieves its plan goals for a satisfactory rating, the FDIC will rate the bank's performance as "satisfactory".
- ***Outstanding***. If the bank exceeds it plan goals for a satisfactory rating and substantially achieves it plan goals for an outstanding rating, the FDIC will rate the bank's performance under the plan as "outstanding".
- If the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will rate the bank as either ***Needs to Improve*** or ***Substantial Noncompliance***, depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in Section 345.27(f)(4).

Lending Test Matrix

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Non-Compliance
Lending Activity	Lending levels reflect excellent responsiveness to assessment area credit needs.	Lending levels reflect good responsiveness to assessment area credit needs.	Lending levels reflect adequate responsiveness to assessment area credit needs.	Lending levels reflect poor responsiveness to assessment area credit needs.	Lending levels reflect very poor responsiveness to assessment area credit needs.
Assessment area(s) concentration.	A substantial majority excellent responsiveness to assessment area credit needs.	A high percentage of loans are made in the institutions' assessments area(s).	An adequate percentage of loans are made in the institution's assessment area(s).	A small percentage of loans are made in the institution's assessments area(s).	A very small percentage of loans are made in the institutions assessment area(s).
Geographic distributions of loans	The geographic distribution of loans reflects excellent penetration throughout the assessment area(s).	The geographic distribution of loans reflects good penetration throughout the. assessment area(s).	The geographic distribution of loans reflects adequate penetration throughout the assessment area(s).	The geographic distribution of loans reflects poor penetration throughout the assessment area(s), particularly to low-geographies in the assessment area(s).	The geographic distribution of loans reflects very poor penetration throughout the assessment area(s), particularly to low- or moderate-income geographies in the assessment area(s).
Borrowers' profile	The distribution of borrowers reflects, given the product lines by the institution, excellent penetration among retail customers of different income levels and business customers of different size.	The distribution of borrowers reflects, given the product lines offered by the institution, good penetration among retail customers of different income levels and business customers of different size.	The distribution of borrowers reflects, given the product lines offered by the institution, adequate penetration among retail customers of different income levels and business customers of different size.	The distribution of borrowers reflects, given the product lines offered by the institution, poor penetration among retail customers of different income levels and business customers of different size.	The distribution of borrowers reflects, given the product lines offered by the institution, very poor penetration among retail customers of different income levels and business customers of different size.

Lending Test Matrix — cont.

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Non-Compliance
Responsiveness to credit needs of highly economically disadvantaged geographies and low-income persons, small business	The institution exhibits an excellent record of serving the credit needs of the most economically disadvantaged area(s) of its assessment area(s), low-income individuals, and/or very small businesses, consistent with safe and sound banking practices.	The institution exhibits a good record of serving the credit needs of the most economically disadvantaged area(s) of its assessment area(s), low-income individuals, and/or very small businesses, consistent with safe and sound banking practices.	The institution exhibits adequate record of serving the credit needs of the most economically disadvantaged area(s) of its assessment area(s), low-income individuals, and/or very small businesses, consistent with safe and sound banking practices.	The institution exhibits a poor record of serving the credit needs of the most economically disadvantaged area(s) of its assessment area(s), low-income individuals, and/or very small businesses, consistent with safe and sound banking practices.	The institution exhibits a very poor record of serving the credit needs of the most economically disadvantaged area of its assessment area(s), low-income individuals, and/or very small businesses, consistent with safe and sound banking practices.
Community development lending activities	The institution is a leader in making community development loans.	The institution has made a relatively high level of community development loans.	The institution has made an adequate level of community development loans.	The institution has made a low level of community development loans.	The institution has made few, if any, community development loans.
Product Innovation	The institution makes extensive use of innovative and/or flexible lending practices in order to serve assessment area credit needs.	The institution uses innovative and/or flexible lending practices in order to serve assessment area credit needs.	The institution makes limited use of innovative and/or flexible lending practices in order to serve assessment area credit needs.	The institution makes little use of innovative and/or flexible lending practices in order to serve assessment area credit needs.	The institution makes no use of innovative and/or flexible lending practices in order to serve assessment area credit needs.

Service Test Matrix

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Non-Compliance
Accessibility of Delivery systems	Delivery systems are readily accessible to all portions of the institution's assessment area(s).	Delivery systems are accessible to essentially all portions of the institution's assessment area(s).	Delivery systems are reasonably accessible to essentially all portions of the institutions assessment area(s).	Delivery systems are accessible to limited portions of the institution's assessment area(s).	Delivery systems are inaccessible to significant portions of the assessment area(s), particularly low- and moderate-income geographies and/or low- and moderate-income individuals.
Changes in Branch Locations	To the extent changes have been made, the institution's record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- and moderate- income geographies and/or to low- and moderate-income individuals.	To the extent changes have been made, the institution's opening and closing of branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate- income geographies and/or to low- and moderate-income individuals.	To the extent changes have been made, the institution's opening and closing of branches has generally not adversely affected the accessibility of its delivery systems, particularly in low-and moderate-income geographies and/or to low- and moderate-income individuals.	To the extent changes have been made, the institution's record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and/or to low- and moderate-income individuals.	To the extent changes have been made, the institution's opening and closing of branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and/or to low- and moderate-income individuals
Reasonableness of business hours and services in meeting assessment area(s) needs	Services (including where appropriate, business hours) are tailored to the convenience and needs of the assessment area(s), particularly low- and moderate- income geographies and/or individuals.	Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of the assessment area(s), particularly low- and moderate-income geographies and/or individuals.	Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of the assessment area(s), particularly low- and moderate-income geographies and/or individuals.	Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of the assessment area(s), particularly low- and moderate-income geographies and/or individuals.	Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of the assessment area(s), particularly low- and moderate-income geographies and/or individuals.
Community development services	The institution is a leader in providing community development services.	The institution provides a relatively high level of community development development services.	The institution provides an adequate level of community development services.	The institution provides a limited level of community services.	The institution provides few, if any, community development services

Investment Test Matrix

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Non-Compliance
Investment and Grant Activity	The institution has an excellent level of qualified community development . investment and grants, often in a leadership position, particularly those that are not routinely provided by private investors.	The institution has a significant level of qualified community development investments and grants, occasionally in a leadership position, particularly those that are not routinely provided by private investors.	The institution has an adequate level of qualified community development investments and grants, although rarely in a leadership position, particularly those that are not routinely provided by private investors.	The institution has a poor level of qualified community development investments and grants, but not in a leadership position, particularly those that are not routinely provided by private investors.	The institution has a few, if any, qualified community development investments or grants, particularly those that are not routinely provided by private investors.
Responsiveness to Credit and Community Development Needs	The institution exhibits excellent responsiveness to credit and community economic development needs.	The institution exhibits good responsiveness to credit and community economic development needs.	The institution exhibits adequate responsiveness to credit and community economic development needs.	The institution exhibits poor responsiveness to credit and community economic development needs.	The institution exhibits very poor responsiveness to credit and community economic development needs.
Community Development Initiatives	The institution makes extensive use of innovative and/or complex investments to support community development initiatives.	The institution makes significant use of innovative and/or complex investments to support community development initiatives.	The institution occasionally uses innovative and/or complex investments to support community development initiatives.	The institution rarely uses innovative and/or complex investments to support community development initiatives.	The institution does not use innovative and/or complex investments to support community development initiatives.

(This page intentionally left blank.)

CRA Sunshine – Disclosure and Reporting of CRA-Related Agreements[1]

Introduction

Section 711 of the Gramm-Leach-Bliley Act (GLBA) added a new section 48 to the Federal Deposit Insurance Act (FDI Act) entitled "CRA Sunshine Requirements." This section requires nongovernmental entities or persons (NGEPs), insured depository institutions (IDIs), and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act (CRA) to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The interagency regulations implementing GLBA's CRA Sunshine Requirements were published January 10, 2001. The GLBA CRA Sunshine Requirements and the implementing CRA Sunshine Regulations do not affect the Community Reinvestment Act of 1977, its implementing regulations, or the agencies' interpretations or administration of that act or regulation.

The CRA Sunshine Regulations identify the types of written agreements that are covered by the statute (referred to as covered agreements), define many of the terms used in the statute, describe how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies, and explain the type of information that must be included in the annual report filed by a party to a covered agreement. However, neither GLBA nor the CRA Sunshine Regulations give the agencies any authority to enforce the provisions of any covered agreement.

The CRA Sunshine Regulations, entitled "Disclosure and Reporting of CRA-Related Agreements," became effective April 1, 2001. As described in the Regulations and outlined in the *Summary of the Disclosure and Reporting Requirements of the Regulation*, the disclosure requirements apply to covered agreements entered into after November 12, 1999, and the annual reporting requirements apply to covered agreements entered into on or after May 12, 2000.

Definitions

In addition to the definitions described below, §346.11 of the CRA Sunshine Regulations provide other definitions, including ones for "affiliate" and "term of agreement."

"Covered Agreement" is any contract, arrangement, or understanding that meets all of the following criteria:

1. The agreement is in writing.
2. The parties to the agreement include:
   a. One or more insured depository institutions or affiliates of an insured depository institution; and
   b. One or more NGEPs.
3. The agreement provides for the insured depository institution or any affiliate to:
   a. Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or
   b. Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.
4. The agreement is made pursuant to, or in connection with, the fulfillment of the CRA.
5. The agreement is with a NGEP that has had a CRA communication prior to entering into the agreement.

A **"Covered Agreement"** does *not* include:

1. Any individual loan that is secured by real estate; or
2. Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities if:
   a. The funds are loaned at rates that are not substantially below market rates; and
   b. The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

A **"CRA affiliate"** of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

A **"CRA communication"** is any of the following that meet the timing and knowledge requirements of §346.3(b).

1. Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository

1 This section fully incorporates the examination procedures issued under DCA RD Memo 02-002: Interagency Examination Procedures for Disclosure and Reporting of Community Reinvestment Act Related Agreements.

institution, any affiliated insured depository institution, or any CRA affiliate.

2. Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

3. Any discussion or other contact with the insured depository institution or any affiliate about:
   a. Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;
   b. Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or
   c. The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

Examples of actions that are CRA communications may be found in §346.3(c)(1), and examples of actions that are not CRA communication may be found in §346.3(c)(2).

"Fulfillment of the CRA" Factors that are in fulfillment of the CRA:

1. Comments to a Federal banking agency or included in CRA public file – Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

2. Activities given favorable CRA consideration – Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement:
   a. Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22 of the CRA regulations, including loan purchases, loan commitments, and letters of credit;
   b. Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23 of the CRA regulations;
   c. Delivering retail banking services, as described in 12 CFR 345.24(d) of the CRA regulations;
   d. Providing community development services, as described in 12 CFR 345.24(e) of the CRA regulations;
   e. In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 345.25(c) of the CRA regulations;
   f. In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a) of the CRA regulations; or
   g. In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 345.27(f) of the CRA regulations.

"Insured Depository Institution" means any bank or savings associations whose deposits are insured by the FDIC and includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purpose of Section 8 of the FDI Act.

"NGEP" A nongovernmental entity or person (NGEP) is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

A **"NGEP"** does *not* include:

1. the United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

2. a federally chartered public corporation that receives federal funds appropriated specifically for that corporation;

3. an insured depository institution or affiliate of an insured depository institution; or

4. an officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of the above mentioned entities.

The **"Relevant Supervisory Agency"** for a covered agreement means the appropriate federal banking agency for:

1. each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

2. each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and
3. any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

Disclosure and Reporting of CRA — Related Agreements Examination Objective

To determine whether the institution: 1) is aware of its responsibilities under section 48 of the FDI Act and the implementing CRA Sunshine Regulation; 2) has identified any written agreements that would trigger the section 48 requirements; and 3) discloses covered agreements and files annual reports as required by the regulation.

Examination Procedures

1. Determine whether the institution can appropriately identify any written contract, arrangement, or understanding covered under the CRA Sunshine Regulation.
2. With regard to covered agreements that the institution has identified, determine whether the institution discloses covered agreements to the public and the relevant supervisory agency in a timely manner and files annual reports relating to covered agreements in a timely manner.
3. Require appropriate corrective action.
4. Document findings.

Summary of the Disclosure and Reporting Requirements of the Regulation

Disclosure of Covered Agreements to the Public

	NGEP	Insured Depository Institution or Affiliate
Which agreements must be disclosed to the public?	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99
When does my duty to disclose a covered agreement to the public begin?	4/1/01	4/1/01
What event triggers my obligation to disclose a covered agreement to a member of the public?	An individual or entity must request you to make a covered agreement available	An individual or entity must request you to make a covered agreement available
How do I disclose a covered agreement to the public?	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at §346.6(b)(3).	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at §346.6(b)(3). An IDI or affiliate may make an agreement available by placing a copy of the covered agreement in the IDI's CRA public file. The IDI must make the agreement available in accordance with the CRA rule on public files.
When does my duty to disclose a covered agreement to the public end?	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.

Summary of the Disclosure and Reporting Requirements of the Regulation (continued)

Disclosure of Covered Agreements to the Relevant Supervisory Agency (RSA)		
	NGEP	**Insured Depository Institution or Affiliate**
Which agreements must be disclosed to the RSA?	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99
When does my duty to disclose a covered agreement to the RSA begin?	4/1/01	4/1/01
When must I disclose a covered agreement to the RSA?	You must disclose your covered agreement to the RSA within 30 days after the RSA requests a copy of the agreement.	You must disclose your covered agreement to the RSA within 60 days of the end of the calendar quarter after the agreement is entered into. However, if your agreement terminated before 4/1/01, you must disclose your agreement to the RSA by 6/30/01.
How do I disclose a covered agreement to the RSA?	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. *See* §346.6(b)(3).	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. *See* §346.6(b)(3). Alternatively, you may provide a list of all covered agreements that you entered into during the calendar quarter, and include the information described at §346.6(d)(1). If the RSA requests a copy of an agreement referenced in the list, you must provide a copy of the agreement and a public version (if applicable) within seven calendar days.
When does my duty to disclose a covered agreement to the RSA end?	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, you must make the agreement available to the RSA until 4/l/02.	If you file a list, your obligation to provide a copy of an agreement referenced in the list terminates thirty-six months after the end of the term of the agreement.

Summary of the Disclosure and Reporting Requirements of the Regulation (continued)

Filing of Annual Reports with the RSA		
	NGEP	**Insured Depository Institution or Affiliate**
What agreements are subject to annual reporting requirements to the RSA?	Covered agreements entered into on or after 5/12/00.	Covered agreements entered into on or after 5/12/00.
What periods require an annual report?	You must report for each fiscal year in which you receive or use funds or other resources under the covered agreement. Alternatively, you may file your report on a calendar year basis.	You must report for each fiscal year in which you have any reportable data concerning the covered agreement described in §346.7(e)(1)(iii), (e)(1)(iv) or (e)(1)(vi). Alternatively, you may file your report on a calendar year basis.
When must I file the annual report?	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. Alternatively, you may, within this six-month period, provide the report to an IDI or affiliate that is a party to the agreement. ou must include written instructions requiring the IDI or affiliate to promptly forward the report to the RSA(s). For fiscal years that end between 5/12/00 and 12/31/00, you must file the report with each RSA (or with an IDI or affiliate that is party to the agreement) no later than 6/30/01.	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. If a NGEP has provided its report to you, you must also file that report with the RSA(s) on behalf of the NGEP within 30 days of receipt. For fiscal years that end between 5/12/00 and 12/31/00, you must file the report with each RSA no later than 6/30/01.
May I file a consolidated annual report?	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements.	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements. If you and your affiliates are parties to the same covered agreement, you may file a single consolidated annual report relating to the agreement.
What must I include in the annual report?	You must include the information described at §346.7(d).	You must include the information described at §346.7(e).

References

The Consumer Compliance Task Force of the Federal Financial Institutions Examination Council (FFIEC) promotes consistency in the implementation of the CRA Regulation by periodically publishing Interagency Questions and Answers, Interagency Interpretive Letters, Examination Procedures, and by facilitating uniform data reporting. The FDIC also issues separate guidance aimed at enhancing examination processes and the quality of public evaluations.

Statute: Community Investment Act, 12 USC 2901
(http://www.fdic.gov/regulations/community/community/12c30.html)

Regulation: Community Investment Act, 12 CFR Part 345
http://www.fdic.gov/regulations/laws/rules/2000-6500.html

Preamble to the 1995 CRA Regulation
http://www.fdic.gov/regulations/community/community/crapreamb.txt

Technical Changes to CRA Regulations to conform with OMB and Census Changes
http://www.fdic.gov/regulations/laws/federal/04joint78.html

Preamble to the 2005 Regulation Change
http://www.fdic.gov/news/news/financial/2005/fil7905a.html

2001 Interagency Questions and Answers
http://www.ffiec.gov/cra/pdf/qa01.pdf; http://www.ffiec.gov/cra/doc/ffiec_qa01.doc);

2006 Interagency Questions and Answers
http://www.ffiec.gov/cra/pdf/06-2188.pdf

Consolidated Guidance for Preparing CRA Examinations and Performance Evaluations
http://fdic01/division/dsc/cra/guidance/part1.html#summary

CRA Amendments in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA)
http://www.fdic.gov/regulations/compliance/manual/part4/p4h-d.pdf

CRA Interpretive Letters

FFIEC CRA Interpretive Letters
www.ffiec.gov/cra/letters.htm

CRA Qualified Investment Fund
http://fdic01/division/dsc/cra/tools/CohenQA.doc

Qualified Zone Academy Bonds (QZAB) Letter
http://fdic01/division/dsc/cra/tools/QZABProgram.doc

CRA-Related Memoranda

Examination Related

DSC RD Memo 03-002: Rescission of Outdated and Superceded CRA Directives in Conjunction with Issuance of Consolidated Guidance for Preparing CRA Examinations and Performance Evaluations
http://fdic01/division/dsc/memos/memos/6000/03-002.pdf

DSC RD Memo 03-037: Revised Small Bank CRA Loan Sampling
http://fdic01/division/dsc/memos/memos/6000/03-037.pdf

DSC RD Memo 05-046: CRA Consideration of Activities that Revitalize or Stabilize Areas Affected by Hurricanes Katrina and Rita
http://fdic01/division/dsc/memos/memos/6000/05-046.pdf

Special Situations/Designations

DCA RD Memo 98-016: Processing Applications Using Community Reinvestment Act and Compliance Examinations and Related Information
http://fdic01/division/dsc/memos/memos/direct/6200-1.pdf

DCA RD Memo 99-012: Special Purpose Bank Guidance
http://fdic01/division/dsc/memos/memos/direct/6456-13.pdf

DSC RD Memo 05-008: Procedures for Processing Request for Wholesale and Limited Purpose Institution Designations and Strategic Plan Approvals under the CRA
http://fdic01/division/dsc/memos/memos/6000/2005-008.pdf

DSC RD Memo 06-001: Hurricane Katrina Guidance
http://fdic01/division/dsc/memos/memos/6000/06-001.pdf

CRA-Related Financial Institution Letters (FIL)

FIL 35-95: Revised Regulation Implementing the Community Reinvestment Act (Part 345); Revision to Regulation C
http://www.fdic.gov/news/news/financial/1995/fil9535.html

FIL 87-95: Technical Amendments to Correct and Clarify New Rules Implementing the Community Reinvestment Act (Part 345,)
http://www.fdic.gov/news/news/financial/1995/fil9587.html

FIL 3-96: Designations as Wholesale or Limited Purpose Institutions; Submissions of Strategic Plans
http://www.fdic.gov/news/news/financial/1996/fil9603.html

FIL 26-98: Guidelines for Strategic Plan Submissions
http://www.fdic.gov/news/news/financial/1998/fil9826.html

FIL 10-2001: Final Rule on the Disclosure and Reporting of Community Reinvestment Act-Related Agreements
http://www.fdic.gov/news/news/financial/2001/fil0110.html

FIL 64-2001: Revised and New Interagency Questions and Answers Regarding Community Reinvestment
http://www.fdic.gov/news/news/financial/2001/fil0164.html

FIL 21-2005: Community Reinvestment Act Joint Notice of Proposed Rulemaking
http://www.fdic.gov/news/news/financial/2005/fil2105.html

FIL 29-2005: Final Technical Amendments to CRA Regulations
http://www.fdic.gov/news/news/financial/2005/fil2905.html

FIL 79-2005: Community Reinvestment Act: Joint Final Rules
http://www.fdic.gov/news/news/financial/2005/fil7905.html

FIL 23-2006: Community Reinvestment Act: New Interagency Questions and Answers
http://www.fdic.gov/news/news/financial/2006/fil06023.html

FIL 33-2006: Community Reinvestment Act: Interagency Examination Procedures
http://www.fdic.gov/news/news/financial/2006/fil06033.html

Job Aids

FFIEC CRA Website: About CRA, How to File, Public Data
http://www.ffiec.gov/cra/default.htm

CRA Wiz/MAPPS
http://fdic01/division/dsc/cra/CRAWiz/index.html

CRA Large Bank Core Tables

Sample Core Tables
http://fdic01/division/dsc/memos/memos/direct/globals/CoreTables/ExampleFMB.doc

"How To" Technical Guide,
http://fdic01/division/dsc/cra/guidance/part3.html, and

FFIEC Interagency Core CRA Public Evaluation Tables Examiner Guidance
http://fdic01/division/dsc/cra/guidance/part2.html

Community Contacts Database
http://s00iis103/ccav2/) and User Guide (http://s00iis103/ccav2/Help/CCUSersGuide.doc

CRA Performance Ratings (FFIEC and FDIC)
http://www.ffiec.gov/craratings/default.aspx
www2.fdic.gov/crapes

CRA Examination Schedule (FDIC)
www.fdic.gov/regulations/community/exam/index.html

A Guide to CRA Data Collection and Reporting
http://www.ffiec.gov/cra/guide.htm

All state member banks, state nonmember banks, national banks, and savings associations, except small institutions, are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of either of the prior two calendar years, had total assets of less than $1 billion. All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year, reporting in electronic format: 1) a transmittal sheet, 2) a definition of its assessment area(s), and 3) a record of its Community Development (CD) loans. In addition, any institution that wants to be evaluated under the Large Bank evaluation method must also collect and report CRA loan data.

Using the loan data submitted by the financial institutions, the Federal Financial Institutions Examination Council (FFIEC) creates aggregate and disclosure reports for each metropolitan area (MA). These reports are made available to the public each summer. The MA aggregate and disclosure reports for calendar years since 1996 are available on the FFIEC's CRA web site at http://www.ffiec.gov/cra. The FFIEC also provides to the public various electronic, paper and magnetic media items.

Approved CRA Wholesale and Limited Purpose Banks, Banks Operating Under Strategic Plans, and Special Purpose Banks
http://www.fdic.gov/regulations/community/community/apprlp.html

Applications Subject to CRA and Public Comments
http://www2.fdic.gov/cra/

Census Information: Available from the FFIEC CRA website

Census Data
Counties Located in Non-Metro Areas Listing
HUD Estimated Metropolitan Area Median Family Income Listing
http://www.ffiec.gov/cra/censusproducts.htm#censusdata

Recon
http://wasiis102p/recon/index.asp

FFIEC Geocoding/Mapping System:
http://www.ffiec.gov/cra/geocode.htm

A web-based tool designed to help institutions report information on mortgage, business, and farm loans. Geocoding refers to the Metropolitan Statistical Area (MSA), State, County, Census Tract combination (address information) that must be provided for each reported loan. The system allows institutions to enter a street address, and it then determines the census tract. When an address is not found, the mapping feature enables the user to determine the property location based on known landmarks, without resorting to a paper map. The system also provides Census demographic information about a particular census tract, including income, population, and housing data. Institutions use this information to assess whether they are meeting the credit needs of the communities in which they operate.

OMB Bulletin No. 03-04: June 2003 changes in Metropolitan Statistical Area (MSA) boundaries and terminology
http://www.whitehouse.gov/omb/bulletins/b03-04_attach.pdf

- A five-digit MSA code from the new list of MSAs is to be used for 2004 CRA data. Use the five-digit code for Metropolitan Divisions when available.
- A four-digit MSA code from the old list of MSAs is to be used for 2003 CRA data.

Community Contacts

Introduction

This section provides information and procedures for conducting community contact interviews. It broadly addresses a wide variety of subjects to accommodate varying communities and types of institutions. As a result, it is NOT meant to be used in the order presented. Examiners should select those steps and procedures that apply to the unique circumstances of the institution and/or the community.

Objectives

The primary objectives of conducting interviews with local community contacts are to:

- Gather information that might assist in the development of a community profile.
- Determine opportunities for participation by financial institutions in helping to meet local credit needs.
- Understand perceptions on the performance of financial institutions in helping meet local credit needs.
- Provide a context on the community to assist in the evaluation of an institution's CRA performance.

General Guidelines

Coverage and Frequency of Community Contacts

Community contacts typically take the form of personal meetings. Telephone conversations or larger group meetings are permitted as necessary and appropriate. Information from community contacts made by other financial regulatory agencies is maintained in the FDIC's Community Contact Database.

In conjunction with each examination, the FDIC will conduct community contacts in the MSA, county or assessment area(s) that the financial institution in question is serving. Where possible, those community contacts should be conducted early in the examination to help to provide information on the community to assist the examiner in the evaluation of the performance context.

Selection of Community Contacts

The number and nature of contacts will depend upon a variety of factors, including the:

- Complexity of the community.
- Size and type of the institution examined.
- Amount and age of community driven information already available to the examiner.

Treatment of Confidential Information

Confidentiality of Institution Records

Examiners must maintain the confidentiality of any institution's proprietary information. When making community contacts, the examiner should not reveal any confidential information obtained from the institution's files or through discussions with management, or any conclusions drawn about the institution's performance or CRA rating.

Protection of Community Contacts

Maintaining the confidentiality of the community contact's identity, when requested to do so, is essential. Examiners must not reveal the name or other identifying information about a community contact to anyone outside the agency without the contact's express permission, either written or verbal, to do so. Notwithstanding the confidentiality treatment, all community contact forms are shared with the federal financial regulatory agencies.

Compliance Report of Examination and CRA Performance Evaluation

Reporting CRA data

Include in the Compliance Report of Examination and the CRA Performance Evaluation, as appropriate, a discussion of the number and kinds of CRA-related community contacts that were performed and relevant information obtained and used, if any, in the CRA evaluation.

NOTE: Information should be factual. While opinions of contacts may be included when applicable, examiners should refrain from drawing conclusions or making judgements based solely on anecdotal evidence.

Sharing Information

Information Sharing Process

The agencies routinely share information obtained during outreach contacts.

Whenever community contacts are made, the examiner initiating the contact should complete the Community Contact Form in the Community Contact Database and submit it according to Regional Office Policy.

Preparation for the Interview

Before conducting interviews, review relevant background information to identify additional areas of inquiry.

Adequate preparation for the interviews includes:

- Reviewing information on the assessment area(s);
- Selecting community contacts; and
- Structuring the interview.

Review of Information on Assessment Area(s)

A review of all available background materials prior to the community contact process is vital in developing a working understanding of the community you are about to enter. The nature, extent and age of the information available prior to conducting community contacts influences your objectives for the community contact process. A well developed context also allows for more detailed and in-depth community contact interviews.

Review Process

The examiner should do the following:

1. Assess prevailing economic conditions and demographic characteristics within and near the assessment area(s).

   This includes a review of available data on:

   - Various population segments within the community;
   - Trends in migration;
   - Labor and employment characteristics;
   - Comparisons to state and county/MSA data; and
   - Housing and real estate market statistics.

2. Assess infrastructural and geographic characteristics within the assessment area(s).

   This includes a review of:

   - Maps;
   - Natural areas;
   - Major thoroughfares;
   - Access to public transportation;
   - Locations of low- and moderate-income census tracts;
   - Names of specific low- and moderate-income neighborhoods; and
   - Proximity of the assessment area(s) to military bases, airport facilities, and metropolitan centers.

TIP: Internal mapping software, information from the financial institution, and information from local planning, transportation, economic development or real estate boards are good sources for possible information.

3. Assess distribution and availability of branch and ATM services especially with regard to low-income areas within the community. Include a review of check cashing facilities, if possible.

TIP: Internal mapping software, if available, can allow the examiner to map these locations.

4. Assess, to the extent information is available, local development issues and priorities in the areas of:

   - Affordable housing;
   - Commercial activity; and
   - Economic and community development.

   A summary of such information may be available from the Community Affairs staff.

5. In addition, the examiner may wish to review previous community contacts for the locality including those from other regulatory agencies.

6. If the examiner is reviewing an MSA, he or she should contact the city's municipality and obtain a copy of its Consolidated Plan ("Conplans"). Conplans list the needs of an MSA as identified and prioritized by its officials.

7. The examiner may also consider obtaining public reports from Multiple Listings Services (MLS) and news articles on local development projects.

   Quantitative sources may include:

   - Feasibility studies;
   - Market analysis; and
   - Commercial appraisal reports for local development projects.

TIP: State or local economic development agencies, utility companies, real estate organizations, and universities present in the immediate or surrounding area are often good sources for such material. Refer to the topic "Identify Potential Community Contacts" for additional potential sources for these types of material.

8. Determine the priorities of the community and the opportunities for financial institutions to participate with local governmental and non-profit organizations in the areas of:

   - Affordable housing;
   - Small business/farm development; and
   - Economic and community development.

9. Review the number and nature of government agencies, non-profit and neighborhood organizations that provide programs and resources to the assessment area(s) for these purposes.

TIP: Sources of information for this step include prior community contacts in the area, information on local programs from the institution, and discussions with appropriate agency staff.

10. Based upon information reviewed above, identify areas that require further inquiry through the community contacts process.

    For example:

- Are there any significant conflicting pieces of information that may require further investigation in the contact interviews?
- Are there any pieces of quantitative information, such as housing and rental values, that are considerably outdated and need to be verified in the contact interviews?
- Does the data suggest particular areas of "need" in affordable housing, such as housing rehabilitation, multifamily development or single family home purchase that you can investigate further and verify through the contact interviews? Or alternatively, are needs for specific areas of the population, such as housing for the elderly, still unclear and therefore require further study through the contact interviews?
- Does the data suggest particular areas of need in services such as ATMs, branches, bilingual services that can be investigated further and verified through the contact interviews?
- Does the review identify organizations or projects requiring additional information?

Identify Potential Community Contacts

This section discusses the number and types of community contacts that should be made during an examination. It also identifies potential community contacts and provides guidance on the sources of information that are available from them.

Number and Type of Contacts

Identification Process

1. Select contacts that can best provide information on the assessment area(s).
2. Consider the nature of the information you are seeking to complete your analysis of the assessment area(s) and the purpose of the organizations in the assessment area(s).

TIP: Examiners may wish to initially consult or select organizations on the telephone to determine which can best comment on particular issues

3. Consider the following factors when determining the appropriate number of contacts to make:
   - The nature of any information provided by the institution including information that specifies credit, service or community development needs in the institution's assessment area(s);
   - The nature of public comments including information that specifies credit, service or community development needs in the institution's assessment area(s);
   - The amount of community contact information available from other examinations conducted for this area, both in number and substance, and the date the information was gathered;
   - The complexity of the community including the size of its population, its geographic breadth, and the diversity of its population; and
   - The characteristics of the institution examined.

NOTE: Time constraints can limit the number of contacts that the examiner is able to conduct.

Organization Types

Grassroots Community Groups

Grassroots groups are formed when concerned individuals come together to solve common problems. Groups whose primary aim is to further the objectives of low-income residents are of particular interest. These groups can be difficult to identify because they tend to be smaller neighborhood groups and may not have readily recognizable names.

However, they will often share the following characteristics:

- Low-income representation is evident in policy and implementation aspects of the organization. This may be evident at the board level, in the committee structure, or the day-to-day management;
- Input from low-income residents is clearly sought in functional/program aspects and, information distribution to low-income individuals is a priority. Examples of this include door-to-door surveys and frequent neighborhood meetings; and
- Low-income individuals are encouraged or empowered to solve problems collectively.

Grassroots community groups include the following types of organizations:

- Churches;
- Block clubs;
- Tenants association;
- Low-income advocacy groups;
- Housing or credit counseling programs;
- Senior citizen groups;
- Shelter providers;
- Health clinics; and
- Community network/collaborative groups.

The following types of information are available from these sources:

- Development priorities and concerns of the local low-income populations;

- Available development programs and resources;
- Current partnerships and/or development projects in the area; and
- The role of financial institutions in the assessment area(s).

Secondary information available includes completed questionnaires or surveys.

TIP: School boards can update census information by providing demographic information on the makeup of their student body. This information is typically collected annually.

Community-Based Development or Financial Intermediaries

The primary aim of these organizations is typically to increase the economic standard of low-income individuals or areas. Thus they tend to be involved in technical aspects of development such as residential and commercial real estate ventures or financing. Though these groups encourage representation of low-income individuals, they are also likely to have a higher degree of staff or decision-makers that live outside of low-income areas that the organization is serving.

Community-based development or financial intermediaries include the following types of organizations:

- Non-profit organizations such as Community Development Corporations (CDCs);
- Church-based economic development programs;
- Community loan funds;
- Small Business Investment Corporations (SBICs);
- Specialized Small Business Investment Corporations (SSBICs);
- Low-income housing organizations;
- Technical assistance providers;
- Low-income credit unions;
- Development institutions; and
- Micro-enterprise groups.

Available from these sources are the following types of information:

- Low-income credit;
- Service and community development issues at the neighborhood level;
- Quantitative information on housing values and actual real estate projects;
- Qualitative information on financial institutions and financial practices of low-income individuals;
- Technical details on financing and lending mechanisms for programs they offer; and
- Information on other government and program resources or ventures in the community.

Secondary information available includes:

- Feasibility studies;
- Appraisal information on specific neighborhoods;
- Local needs assessments;
- Surveys of institution's activities;
- Surveys of financial practices of low-income clientele; and
- Lending agreements by groups of local financial institutions.

Government Offices

Government offices include the following types of organizations:

- Local branches of Federal agencies, such as:
  - Department of Housing and Urban Development (HUD);
  - Small Business Administration (SBA);
  - Department of Commerce;
  - Economic Development Administration (EDA);
  - Farmers Home Administration (FmHA);
  - Bureau of Indian Affairs (BIA); and
  - U.S. Department of Agriculture (USDA).
- Local groups of federally funded or mandated programs, such as:
  - Community Action Agencies (CAAs);
  - Neighborhood revitalization programs; and
  - Office of Minority Business Enterprise (OMBE)'s business development centers.
- Local elected officials, such as:
  - Mayors;
  - Commissioners;
  - Tribal chiefs;
  - City council members; and
  - Tribal council members.
- State and local housing agencies or authorities
- Economic development agencies, such as:
  - Industrial and redevelopment agencies or authorities;
  - County or regional planning agencies;
  - Transportation agencies;
  - Utility companies;
  - Rural electric cooperatives;
  - Economic Development Corporations (EDCs);

- Local planning or economic development directors; and
- School board superintendent and officials.

Available from government offices are the following types of information:

- Loan, grant, guarantee or other programs available for use by institutions and housing, community, and economic development groups;
- Amount of funding available through such programs in the institution's assessment area(s);
- Extent to which local financial institutions participate in such programs and perspectives on barriers or issues related to their participation;
- Specific project opportunities in which institutions could participate; and
- Information on underserved neighborhoods or areas.

Secondary information available includes:

- Housing, small business, agriculture and general economic conditions and trends in the assessment area(s);
- Publicly sponsored comprehensive or general development and redevelopment plans and maps; and
- Other plans and studies, such as housing plans (for example, the Consolidated Plan), economic development plans and studies, and various community service needs in the assessment area(s).

Business and Labor Groups

Business and labor groups include the following types of organizations:

- Chambers of commerce;
- Downtown and neighborhood merchants associations;
- Small and minority business advocacy groups;
- Realtors;
- Minority and non-minority real estate agents;
- Local venture capital companies;
- SBA/college-supported Small Business Development Centers (SBDCs);
- Feed stores;
- Cattlemen's associations;
- Actual small business owners; and
- Small business technical assistance providers, such as business incubators and local union representatives.

Available from these sources are the following types of information:

- Data and perspectives on local business, economic conditions, recent economic activity and trends in the community;
- Nature and extent of small business activity, level of referrals from financial institutions to SBDCs;
- The existence of active SBA 504 programs, SBIC or SSBIC programs;
- Perspectives on financial institution efforts to provide financing and services to small businesses/small farms;
- The level of institution participation in other public/private programs for small business development and employment training; and
- Other private and public sources of financing available for small businesses and small farms in the assessment area(s).

Secondary information available includes mortgage interest rate sheets from financial institutions or mortgage companies obtained from realtors.

Civil Rights and Consumer Protection Groups

Civil rights and consumer protection groups include the following types of organizations:

- Open housing/fair housing organizations;
- Local chapters of the National Association for the Advancement of Colored People (NAACP), Urban League, Urban Coalition, and National Organization for Women;
- Legal aid/legal services offices;
- Human relations commissions;
- State attorney general; and
- Consumer protection office.

Available from these sources are the following types of information:

- Credit needs;
- Issues or priorities for any protected classes;
- Complaints against specific financial institutions; and
- General perspectives on financial institutions in the assessment area(s).

Secondary information available includes studies using testers in financial institutions, formal complaints or case write ups.

Other Potential Contacts

The following types of organizations can also provide information:

- Universities;
- Research institutions;

- Foundations; and
- Hospitals or hospital extension programs.

The types of information available from these sources are many and varied. Specific community projects by universities or hospitals may be involved.

Secondary information available includes:

- Demographic and economic data;
- Independent research studies or reports on community development topics;
- Studies and data collection on development and economic trends or opportunities in the area; and
- Automated "Conplans" may also be available.

Conducting the Interview

Having determined the groups and/or individuals to be contacted and the information to be solicited from each interview, the examiner must then plan the structure and content of questions prior to the interview. This section provides a sample list of questions that the examiner may wish to consider. The examiner should select and tailor questions from the list of sample questions that would be the most effective for each specific contact.

The questions highlight the type of information that the examiner is seeking through the community contact process. They are meant to serve as a guide to assist the examiner in planning the substance and structure of the interview. Obviously, not all questions will be appropriate to each specific contact. The list is not all inclusive; particular questions may generate significant discussions and examiners are expected to probe and conduct follow-up questions appropriately. Examiners are encouraged to review the entire list before structuring their interview. As examiners gain experience, they are encouraged to engage in discussion with the community contact and not undertake a "question and answer" format.

Background Information on Community Contact

Obtain Background Information

General:

1. The examiner should ascertain the organization's area of expertise and the role that it plays in the community. The following questions apply.
    - What geographic areas does the organization serve?
    - How old is the organization? How was it started? How much involvement by local residents and/or low-income residents was there initially?
    - Who does the organization represent? Roughly what percentage of your client base is very low- (defined as 25-50% of median area income), low-, moderate- or middle-income?
    - What is the mission and the primary goals of this organization? What are the goals for this year?
    - Is there a Board of Directors? What is the representation on the Board? Are there low-income neighborhood residents on the Board? Are banks/ lenders or other financial institutions on the Board?
    - What projects or programs are you currently working on? Aside from programs are there other means in which the mission is carried out?
    - How many "clients" does this organization serve on a monthly or annual basis? If the organization is involved in development, how many real estate projects have been completed in the organization's history? How many are on-going?
    - If direct loans have been provided through any programs, what type of loans are they? What segments of the community have benefited from these loans (low-, very low-, moderate-income, elderly, etc.)? What is the number and dollar volume of loans generated?
    - What are the amounts and sources of the organization's funding? How is the funding disbursed (for example, what activities does it fund and how much of the budget is devoted to each activity)?
    - Could you list the organization's major accomplishments in the past 5 years? Is there such a list that you may have for purposes of your funders or funding proposals that I may have a copy of?
    - What are some of the limits the organization is facing in serving its community? In what areas is it currently encountering opportunity?
    - Is the organization interested in expanding its program or project areas at this time? In what area? Is there a time-line in place to implement these activities or expected to be in place?

Specific to economic development agencies (including utility companies):

- Are there empowerment zones (EZs), enterprise communities (ECs), or Foreign Trade Zones (FTZs) in your area? Where? What types of monetary incentives are offered?
- What are examples of small business, small farm, and community-based development that the agency has been involved in? Has activity been concentrated in a few areas? Which ones?
- Does the economic development agency also coordinate the housing program and monies for this jurisdiction? If not, is economic development coordinated with housing officials? What priority is accorded to affordable

housing? What priorities, if any, are accorded to specific population segments (e.g., elderly, special assistance, female heads of households, homeless, other)?

- Are the economic development strategies or the availability of the programs communicated to local residents in any way? How?

  NOTE to Examiner: Did you find that local residents or community representatives were able to articulate strategies or various programs?

- Does the agency have working relationships established with community organizations at the neighborhood level? Who? What are the names of the individuals that the agency has worked with? If so, what is the extent of the partnership that has been established?

Specific to local government:

- What is the structure of the local government? Is there an economic development department? Is this separate from housing development?
- Which department has responsibility for economic development policy?
- Does the local government have programs that target affordable housing, small business development and/or community development projects? How much funding do they have?
- Has the local government identified priorities for its housing and economic development funds? Has the government determined what impact this will have for the population (for example, for the elderly, low-income families, individuals with special needs, the homeless)? To the agency's knowledge, what has been the impact of its funds in the last several years?
- How much money has been allocated for affordable housing, elderly needs, special needs, etc.? What is the time frame for the disbursement of funds, particularly Community Development Block Grant (CDBG) funds?

Specific to real estate brokers:

- Do you have brokers who specialize in low- or moderate-income housing (single or multifamily)?

Obtaining a Community Profile

One of the primary objectives of the contact process is to update the community profile.

Update the Community Profile

1. The examiner is expected to obtain and update information on current economic conditions and trends, current demographic characteristics and existing credit needs. The following questions apply.

   General:

- What is the current demographic makeup of the community? What were the most significant demographic changes in the past five to ten years, if any (for example, migration patterns, racial composition)?
- Which neighborhoods are in transition, if any? Has gentrification or the displacement of low- or moderate-income individuals become an issue in certain neighborhoods? In which neighborhoods? Is the potential displacement of individuals being managed in some process, for example, a relocation package? If so, how and who is involved?
- What major employers have either entered or left the community in the last few years? Has this impacted certain categories of the labor market and not others? If so, who was positively impacted? Negatively? How?
- Who or what organizations are the driving forces in the community (examples include churches, government, community groups, etc.)?
- What priorities have you identified for this area?
- Have you conducted any studies (for example, neighborhood surveys or feasibility studies) that may provide insight into local credit, service or community development needs? What were the results? (Obtain a copy, if available.) How was the study used and what was the distribution (any banks included)?
- Do zoning restrictions play a role in the availability of affordable housing units? How? Which neighborhoods are most impacted?
- Are absentee landlords a problem? For whom? In which neighborhoods?
- In your opinion, what credit needs have not been adequately satisfied by area financial institutions? (Give example: small business loans, home improvement loans, installment loans, etc.)
- To what extent are financial services available in the assessment area(s)? What is the availability of ATMs or branches in this neighborhood?
- Are there many women- or minority-owned businesses in the area? If so, are they concentrated in any geographic location or occupational field?

Specific to community-based organizations:

- Does this community have a significant number of people that would be "uncounted" in official Census figures? If so, why? Does your organization give estimates of the uncounted or real population?
- What are the primary and secondary issues that low-income people in this area are concerned with in the short term? Long term?
- What are the most pressing concerns (for example, adequate housing, access to retail goods, adequate

public transportation facilities, adult education, job training and placement, English as a Second Language (ESL), health facilities) that you have been able to identify facing low-income residents?

- What language(s) are spoken in the community?

Specific to economic development agencies (including utility companies):

TIP: Economic development agencies typically operate at the county or MSA level. Using follow-up questions and probing techniques, attempt to get as local an assessment as possible.

- What are the primary economic strengths of this area? Primary weaknesses?
- Are there development plans currently underway for infrastructure related projects such as bridges, sewers, etc.? If so, what is the suggested time table? Will the project generate or is it generating jobs for low- or moderate-income residents?
- What are the main economic development strategies (examples include: business attraction, business retention, marketing, small business development, etc.) that you are currently pursuing for the overall county or MSA? For a particular neighborhood? What priority is given to small business, small farm, and community-based development (such as grocery stores, day care facilities, etc.)?

Specific to housing organizations (state, local, etc.):

- What is the waiting list for various affordable housing programs in the area?
- Have you received complaints from tenants that buildings are not in compliance with local building codes? In your perception, how widespread is this problem?
- What is the nature of demand for affordable housing? How does this compare to available housing stock, both in terms of number of units and types of units?
- How would you rate the need for housing among various sectors of the community, such as the elderly, individuals on special assistance, female heads of households, the homeless, others?
- Are there structural inadequacies in the type of housing stock available for low-income populations in this area? Is housing rehabilitation a priority issue amongst those your organization has identified?

Specific to real estate brokers:

- (Refer to specific geographic areas) What are the current economic conditions in this general area? Are housing values going up or down? If it is an "up" market, what are some of the forces contributing to its success? If down, what are some of the issues contributing to its decline?
- Has there been any recent development activity in this area? What is the nature of the development (commercial, residential, affordable housing, public projects)? What has been the impact on the neighborhood?
- Are there mobile homes or concentrations of mobile homes, such as mobile parks, in any area?
- What is the average length of time that single family homes are on the market in this neighborhood?
- Other types of residences? Other neighborhoods?
- Do you know of any changes in the near future that would impact the market for residential/commercial properties in a specific area? What are these changes (political, environmental, legal, etc.)?
- Do you have copies of any appraisal reports for commercial and residential properties? For which areas (obtain, when possible)?
- Are you aware of appraisal-related problems in this neighborhood, such as the lack of comparables?
- What credit products do your customers typically use to purchase a home? Conventional mortgages? Government loans? Land contracts? Why?
- What are the various sources of financing that your customers typically use? Banks? Thrifts? Mortgage companies? Home improvement dealers? Credit unions? Employer-related sources (for example, GMAC)? Others? Are particular combinations of sources more typical than others?
- What are the characteristics of likely investors for multifamily housing properties in a specific neighborhood? What are the likely financial risks and rewards for investors in this area? (Compare with other neighborhoods.)

Specific to Foundations:

- What types of eligibility criteria are currently established for community development programs?
- Which organizations and projects do you fund? How much money is committed to these organizations and/or projects for this year?
- Out of the programs and/or organizations that you funded in this area, which are the most effective in the affordable housing area? In the small business development or community development area?

Assessing Opportunities for Financial Institution Participation

The degree to which financial institutions are involved in community development projects or services depends in some

part on the extent of other resources and partners available within the community.

Examiners are expected to:

- Obtain information on the availability of resources dedicated to the local credit or development needs that have been identified; and
- Gauge the level of the contact's efforts in approaching local financial institutions and the mechanisms of financing involved, if any.

In addition to any background materials reviewed in the preparation portion of the examination, contacts can provide relevant information on:

- The number and nature of community development or credit-related projects being developed for the benefit of the community;
- The number of organizations or government programs committed to those activities;
- The extent to which partnerships or other forms of coordination are evident in the area;
- The level of resources devoted to these activities; and
- How active these programs or resources are with respect to promoting the credit or banking needs that local representatives or residents have identified.

Assessing Opportunities for Participation

The following questions apply to:

Community-based organizations:

- Has your organization ever participated in activities, either formally or informally, with financial institutions? If so, which ones? For what projects or products? For what clients (for example, what were the income characteristics of those who benefited)?
- Does your organization partner with other groups, including religious organizations, government agencies and neighborhood organizations, in conducting any of its program activities?
- Tell me about any other organizations you work with in meeting your clients' needs. What other organizations serve this community in the areas of affordable housing? Small business development? Commercial, day care or other community related facilities? Job training? Credit counseling? Low-income advocacy?
- Which of these organizations do you consider most active? If I wanted more information from them, whom should I contact?
- Which financial intermediaries do you consider particularly effective? Why?
- Are you seeking funds from local financial institutions for any current projects?
- What is the nature of the project? Is it a development-based product? Is it related to credit needs in the community? Is there a specific neighborhood or group of individuals that this project will benefit? How?
- What are the specific requirements for the financing that you are seeking?
- Are you aware of similar projects that other organizations are working on?
- What can you tell me about those? Who can I contact to learn more?

State and local economic development agencies, government agencies:

- What, if any, commercial development projects are underway? Where are they located? Are jobs created? Will low- or moderate-income individuals benefit? How?
- What are the number and nature of various economic development programs funded by the city or state? How many residents do these programs benefit annually?
- Which of these programs, if any, are designed to leverage funds from financial institutions? What are the mechanics of the program? How many projects have been funded to date? Which financial institutions have participated in these programs? Is there a particular area or group that these funds target?
- Do you have programs designed specifically for affordable housing or small business development? If so, how many small businesses and/or small farms benefit? What is your definition of small business?
- What are the funding levels of these programs? How many projects have been funded to date? Is there a particular neighborhood or group that these funds target? If so, what are they?
- Have any financial institutions participated in these programs? If so, which ones?
- Do you currently have other projects or have you had projects in the past that required either investment or other forms of financing from a financial institution? What are/were the characteristics of the project? Its financing? Include projects involving bond issuances, etc. What were the results? Innovative? Risky?
- What financing mechanisms are needed, planned or in place for any development or infrastructure related projects?

Real estate brokers:

- Do you know about local or state financing programs for affordable housing, small business or commercial development? How did you hear of these programs?
- Are there specific home insurance or financing programs that you utilize or to whom you refer customers? Which ones? Which do you utilize specifically for your low-income customers?
- Which financial institutions in the area are you aware of that access these programs? How actively? Which do not?

In addition, another function of the community contact process is to obtain feedback from the community on the performance of local financial institutions.

Obtaining Local Perspectives on the Performance of Financial Institutions

Obtain Feedback from the Community

1. The examiner is expected to gather information on the willingness and responsiveness of financial institutions, including the institution under examination, to work with local residents and professionals in meeting credit and community economic development needs.

The following questions apply.

General:

- With which banks, savings and loans, or mortgage companies have you been involved? What was the nature of your involvement?
- Has your organization ever participated in activities, either formally or informally, with financial institutions? If so, which ones? How did this professional relationship develop?
- What were the results of your involvement with financial institutions? In what ways has financial institution participation had a positive impact? In what ways has it had a negative impact? Probe for such project aspects as timing, financing terms, etc.
- Are local financial institutions pro-active in developing relationships or offering assistance? If so, which ones?
- What financial institution(s) does your group recommend to your constituents? Why?
- What obstacles, if any, prevent greater involvement from financial institutions in meeting local credit needs?
- Have you ever been invited by institutions to participate in institution-sponsored activities? If yes, specify the activities' purpose and the role you played.
- Has your organization ever received complaints about individual institutions?
- Did the people affected know about the complaint process or were they informed about it?
- Did any of the complaints involve allegations that the institution(s) discouraged people from submitting an application? Did any complaints involve geographic or racial redlining, or any other forms of discrimination? What happened?
- Is anyone in your group or known to your group willing to offer specific evidence of discriminatory actions by specific institutions?

NOTE: If allegations of discrimination, discouragement or redlining are made with respect to an institution not regulated by your agency, forward the relevant information to the institution's primary regulator.

- In your opinion, which institutions in the area have been particularly outstanding in meeting the community's needs? Why? What, specifically, has been done by these institutions?
- In your opinion, which area institutions have been particularly notable for their unwillingness to respond to the community's needs? Why?
- In your opinion, how well does [institution name] meet the credit needs of this community?

Community-based organizations:

- Have you discussed local credit needs with any financial institutions? What were the results?
- Do any institutions provide in-kind services, for example, loaned executives, etc.?
- What efforts are made to inform institutions and obtain their participation in the organization's activities? Which institutions participate and to what degree? Which institutions, if any, declined to participate?
- If your organization works with government enhancement programs, do financial institutions work with you on that product? If so, which ones?
- What efforts have you employed to improve your organization's relationship with any institutions? Which institutions? How successful have your efforts been?

Real estate brokers (be sure to include those operating in low- or moderate-income areas):

- Do you frequently work with financial institutions or other lenders that originate home mortgages?
- Which institutions do you receive rate sheets from on a consistent basis? How are they typically delivered to you?

- Are local lenders willing to work with you for first time home-buyers? If so, which ones? Why or why not?
- Are local lenders willing to work with you on exceptions on credit reports? If so, which ones? Why or why not?
- What knowledge, if any, do you have of credit standards being adjusted in either a preferential or discriminatory manner? Which lenders? What were the circumstances?
- Have you worked with lenders that have taken customers under the Fannie Mae 97% program? Freddie Mac? Others?
- Which lenders do not receive your referrals for home purchases and why? Which lenders do not receive your referrals for small businesses and why?
- What percentage of referred home buyers normally go to the recommended lenders?
- What percentage of referred home buyers normally get loans from recommended lenders?
- What other methods could be used to increase the use of insured financial institutions by people in your market area? In particular, are some financial institutions attracting portions of the market and not others? For which products?
- Do women or minorities have more difficulty than men in obtaining mortgage loans? If so, why?
- Which institutions are perceived as not meeting the needs of women or minority applicants?
- Are there outreach activities by particular institutions for women or minority customers? Do you perceive these programs as positive?
- In your experience, are there certain institutions favored in the minority and/or women's business community?

Business, labor or consumer groups working with the women or minority business community:

- What is the general perception of financial institutions in the minority business community? In the women's business community? Why?
- Do any financial institutions have a small business department targeting to women or minorities? Which ones? How is it done?
- Which institutions have separate minority or small business counseling services? Do the counselors also have lending authority?

Use of the Community Contact Form

Examiners should summarize each interview they conduct on the Community Contact Form within the Community Contact Database of the FDIC's Intranet. The purpose of this form is to provide a consistent means by which financial institution regulators can share information obtained through interviews for a particular community. The individual conducting the interview should inform the interviewee that this information will be shared with other regulatory agencies.

(This page intentionally left blank.)

Sampling Guidelines CRA

Introduction

This section provides sampling guidelines to assist examiners in selecting a sample of loans for review for CRA.

General Sampling Guidelines

Based on loan sampling, examiners should estimate three sets of proportions in connection with CRA examinations of small institutions:

- Loans inside and outside an institution's assessment area(s);
- Loans in low-, moderate-, middle-, and upper-income geographies in an assessment area; and
- Loans to low-, moderate-, middle-, and upper-income borrowers within an assessment area and/or loans to small businesses/farms of different sizes within an assessment area.

Examiners should analyze the results based on the performance context and other information obtained during the examination.

Small institutions (including intermediate small banks) are not required to collect data for CRA examination purposes. However, some small institutions may choose to provide data regarding their loans, including the census tract locations and borrower incomes, similar to the data requirement for large institutions. Some institutions may even provide a summary of their distribution of loans. In this case, if the examiner is able to verify the institution's information, the examiner may use the data supplied by the institution and will not need to perform sampling to evaluate the institution's CRA performance.

These sampling procedures may also be utilized at large institutions if data have not been collected for some reason. For example, if a large institution has chosen not to collect consumer loan information, yet it comprises a substantial portion of lending, an examiner may choose to review consumer loans. In this case, these sampling guidelines would apply.

Statistical Sampling at Small Institutions

- Determine major product lines from which to select a sample, taking into account factors such as the institution's business strategy and its areas of expertise. As an initial matter, examiners may select for review from among the same categories of loans that are to be used when reviewing large institutions (for example, home mortgages, small business and small farm loans, and consumer loans).
- Determine the universe of loans for each category.
  NOTE: The universe of loans is defined as the total number of loans, both originated and purchased by the institution, for a major product category.
  In order to determine the number of loans for the sample (known as the sample size), examiners should know the number of loans in the universe.

  This universe can be defined as any of the following:

  - Total number of loans since the previous examination;
  - Total number of loans in the previous year; or
  - Total number of loans in the previous six months.

  At a minimum, the universe of loans should cover at least the activity in the six months prior to the start of the examination.
- Determine the number of loans to be sampled for each product category by using the Sample Size Table. The table indicates the sample size based on the universe of loans for each product and the desired confidence and precision levels.
- Initially, examiners should select samples based on a 90% confidence interval, with a level of precision of plus or minus 15 percentage points. This means that there is a 90% chance that the results from the sample will be within 15 percentage points of the true proportion, for whichever criterion is being evaluated.
- For loan products or institutions that require further investigation or are undergoing greater scrutiny for any reason, a larger sample may be necessary because examiners may need results with a higher degree of reliability. Examiners may use the 90% confidence level with a level of precision of plus or minus 10 percentage points when a larger sample is necessary. Examiners should use their judgment to determine which sample size to use based on the initial scoping of the examination and subsequent findings on site.

Sample Selection from Automated Download or Loan Trial

Once the number of loans to be sampled is determined, examiners should select loans from the financial institution's automated download of the loan portfolio or a loan trial, as opposed to making a general request for loans and allowing bank management to select the loans for review. Examiners should first determine if an automated download is available. Procedures for selecting loan samples from an automated download are explained in the next section. If an automated download is not available, the sample should be selected through the financial institution's loan trial. The use of random selection methods (whether from an electronic or a hard copy list) should increase substantially the objectivity of the examination, as compared to those based on judgmental sampling. This is because the use of random selection methods

removes the potential for bias in results associated with the loan selection process.

NOTE: There may be some difficulties with manipulating the electronic files or loan trial because of the need to understand the file structure and/or the codes used by the bank. Examiners should also request information about the loan codes from financial institution management.

Sample Selection from Automated Download

The following provides guidance for selecting a stratified random sample of loans for CRA review when the financial institution's loans are provided in an electronic format. The different types of loans being sampled at a financial institution constitute the strata. A separate random sample will be selected from each stratum (loan type). Because the loans are in an electronic file, this is a fairly straightforward process: the loans can be electronically arranged and sorted in specified ways for sampling purposes.

Step 1. Once an electronic file of the financial institution's loans is obtained, and the coding structure is known, the process of selecting a sample is relatively easy. The loans are grouped into the various loan universes that will be sampled (e.g., home purchase loans, small business loans). Each loan universe could be a separate electronic file or a subfile of the main file. Within each loan universe, a random sample of loans will be selected.

NOTE: There should be sufficient information in the file to identify the different loan types, though an examiner may need assistance from bank management to interpret the codes.

Step 2. For each universe, place the loans in random order. The random ordering is achieved by assigning a random number between zero and one (i.e., a decimal number) to each loan in the file, and then sorting the loans in ascending order by the random number. Excel software contains a random number generation tool that examiners should use to randomly select loans for review during an examination. This "random number generation" tool can be accessed by following these steps:

- Select the following from the Excel Menu:
  - Tools
  - Add-Ins
  - Analysis Tool Pak (check box and click "OK")
  - Tools (again)
  - Data Analysis
  - Random Number Generation (highlight and click "OK")
- Respond to the items on the Random Number Generation screen as follows:
  - Number of Variables (Leave blank)
  - Number of Random Numbers (Leave blank)
  - Distribution (Select "Uniform" from list)
  - Parameters (Leave default set at 0 and 1)
  - Random Seed (Leave blank)
  - Output Options (Click "Output Range")
    - (Click the box for "Output Range")
    - (Select the range (output location) for the random numbers by highlighting the column on the spreadsheet where the random numbers should be placed. Use the "Shift" key and the down arrow to highlight the column.)
    - (Click box at end of selected range or press enter)
    - (Click "OK")
- The random numbers are automatically assigned and placed in the designated statistical column. Sort the loans in ascending order by the random number as follows:
  - Click a cell in the column you would like to sort by
  - Click "Sort Ascending"

Step 3. Once the loans for a given type are placed in random order, determine the number of loans to select for review. The sample needed for the examination is simply taken from the top of the list. If an "out-of-scope" loan is identified in the sample, the examiner selects the next loan from the list to replace it. From within each loan type, print out all of the loans that will be reviewed. This information should be forwarded to bank management so that the loan documentation files will be ready at the commencement of the examination.

NOTE: An "out-of-scope" loan would be any loan that is not in the target universe. For instance, a loan that was originated prior to the last examination date, a business loan that is greater than $1,000,000.

Step 4. If an examiner decides that additional loans for a given stratum (type) are needed based on the results of the initial sample of loans, additional loans should be selected. As with replacements for "out-of-scope" loans, the examiner would take the additional sample of loans from the list, picking up where he or she left off when selecting the initial sample.

Sample Selection from a Loan Trial

For the case of sampling from a loan trial, the selection of a simple random sample from each stratum (type) would be rather difficult to do. Instead, another type of statistical sample, referred to as a systematic sample, should be selected from each stratum. As is true for a simple random sample, each loan in a given stratum will have the same chance of being selected for review. The basic idea of systematic sampling is straightforward:

- Select every kth loan (for example, every fifth loan) after selecting the initial loan at random from among the first "k" loans (for example, a random selection from among the first five loans).

The logistics of preparing a "universe" of loans from the loan trial for sampling, however, can be somewhat problematic, as will subsequently be discussed.

The different types of loans being sampled at a bank constitute strata. A separate systematic sample will be selected from each stratum (loan type). There may be a separate loan trial (or group of two or more trials) for each stratum. Alternatively, the different types of loans may be mixed together on a single loan trial. These two possible situations are addressed separately as Case 1 and Case 2, as follows:

Case 1: The bank provides separate loan trials for each of the major types of loans being sampled.

Assume there is only one loan trial for each type of loan. If there are two or more trials for a type, the lists can just be merged to form one list.

Step 1. Review the loan trial and cross out any loans that can be identified as being "out-of-scope" for the review (e.g., the date of the loan is not within the time period specified for review).

Step 2. Once the "out-of-scope" loans have been crossed off, number the remaining loans consecutively from 1 to N, where N is the total number of "in-scope" loans on the list.

NOTE: Some of the loans in the remaining list may still be "out-of-scope," but cannot be identified prior to the review process.

Step 3. Determine a sampling (or skip) interval "k" by dividing N by the target sample size n, and rounding the result off to the nearest integer. For example, if there were N=123 loans on the trial for a given loan type, and the examiner decides to select n=10 of them for review, the selection interval "k" would be 12 (i.e., 123/10, rounded to the nearest integer).

NOTE: To compensate for "out-of-scope" loans, it is at this point that the examiner may wish to "oversample." This procedure is explained in Step 5.

Step 4. Identify the "random start" (initial selection) for the systematic selection, which is a randomly selected loan from among the first "k" loans listed in the trial. To do this, refer to the list of random numbers provided. Take the first random number available from this list (for example, the first one that has not yet been used). This will be a decimal number between 0 and 1. Multiply the random number by the selection interval "k" and round the result up to the next integer. This integer will identify the "random start." Suppose that for the example introduced above with k=12, the next available random number from your list is 0.34309. The product of 12 and 0.34309 is 4.11708. Therefore, the random start (first selection) would be loan number 5 (since you always round up). Once you have the random start, the other selections are identified by repeatedly adding the skip interval "k" to the previous selection number. For example, in the case discussed above with a random start of 5 and a selection interval of k=12, the other selections would be loans numbered 17, 29, 41, 53, 65, 77, 89, 101, and 113.

Step 5. The systematic selection process should continue until the end of the list is reached, even if this adds one or two selections to the target sample size (this could happen because of the rounding of the skip interval "k" to an integer). If any of the loans selected are identified during the review process as "out-of- scope," it should be dropped from the sample *without being replaced*. For example, *do not* replace an "out-of-scope" loan with the next one on the list. The deletion from the sample of "out-of-scope" loans may reduce the sample size below the target. If such a reduction is minimal, and if the examiner feels that the remaining sample is adequate, nothing more needs to be done. However, if the reduction in the sample size is of concern, there are two methods that can be used to compensate for "out-of-scope" loans.

- **Method 1.** The preferred method is to "oversample" to allow for anticipated deletions. For example, if the examiner expects, based on previous experience, that 10% of the loans in the loan trial are actually "out-of-scope," the sample can be increased by 10% to account for this. In the example discussed above with a target sample size of 10, the examiner would select a systematic sample of 11 to compensate for an anticipated "out-of-scope" rate of 10%. This would dictate a selection interval "k" of 11 rather than 12. If all 11 loans turn out to be "in-scope," they should all be retained for the sample.
- **Method 2.** Select a supplemental sample after a review of the initial sample. In this case, the size of the supplemental sample would be determined to provide the correct number of additional sample loans. The selection procedures used for the supplemental loan sample would be the same as those used for the initial sample, after removing the initial selections. For example, if in the case discussed above for selecting ten loans, suppose that three of them turn out to be "out-of- scope," leaving a deficit of three. A supplemental sample of three or four loans could then be selected. It would be wise to select four, since the initial sample suggests that the "out-of-scope" rate is 30%. To select four additional loans, the remaining loans (i.e., 123-10) would be renumbered from 1 to 113. The new selection interval "k" would be 28 (i.e., 113/4, rounded). To

identify the random start for the supplemental sample, use the next random number from the list of numbers provided at the end of this section. Multiply this random number by 28, and round the product up to the next integer to identify the first selection.

Case 2: The bank provides only one loan trial, and all loan types are mixed throughout the list.

- This case is more complicated and more prone to errors than Case 1, even though the basic idea is the same. The first step is identical to that for Case 1— Review the loan trial and cross out those that are known to be "out-of-scope."
- Next, go through the list and classify each loan by type. This might best be done using different colored highlighters to identify the loans by the different types. Then, the loans of a given type (same color) are numbered consecutively from 1 to N, and selection from these would be carried out the same way as it was in Case 1 (Steps 3–5), including any possible "oversampling" or sample supplementation.

Information to be Gathered for Each Loan Record

- Once the loans for each sample have been identified, record relevant loan information into a spreadsheet. Data for each loan should include, at a minimum:
  - Institution's internal loan ID number;
  - Loan type;
  - Loan dollar amount;
  - Location – In cases where the census tract of the loan is not readily available, examiners are expected to geocode the loans (refer to "Geocoding Loan Locations" below);
  - For the home related and consumer loans sampled, the borrower income that was used to approve the loan; and
  - For the small business and small farm loans sampled, the business's or farm's revenue.
- When data is missing, attempt to obtain this information through discussions with institution personnel. Obtaining information through these discussions can significantly reduce the number of records in the sample with "missing data" and thereby increase the validity of each sample.

Geocoding Loan Locations

If the institution has not already geocoded each loan by determining the Metropolitan Statistical Area (MSA) (if applicable), state, county, and census tract, the examiners will need to determine this for the loans in the sample. MSA /Census tract information is available through the Internet.

Calculating Proportion Estimates

- Calculate the following proportion estimates as itemized in the examination procedures:
  - Percentage of the number of loans (by product type) inside and outside the assessment area(s); and
  - Percentage of the dollar amount of loans (by product type) inside and outside the assessment area(s).
- In accordance with the CRA examination procedures, examiners should tabulate the following statistics based on *only those loan records from the sample that are within the assessment area(s)* for each product category:
  - Number and percentage of loan originations (by product category, if applicable) in low-, moderate-, middle-, and upper-income geographies;
  - Dollar amount and percentage of loan originations (by product category, if applicable) in low-, moderate-, middle-, and upper-income geographies;
  - Number and percentage of loan originations (by product category, if applicable) to low-, moderate-, middle-, and upper-income borrowers;
  - Dollar amount and percentage of loan originations (by product category, if applicable) to low-, moderate-, middle-, and upper-income borrowers;
  - Number and percentage of loan originations to small businesses/farms of different sizes (by revenue); and
  - Dollar amount and percentage of loan originations to small businesses/farms of different sizes (by revenue).

Examiners should follow the guidelines in the CRA examination procedures for analyzing the results from sampling and, ultimately, assign a rating to the institution's lending performance.

Sampling Guidlelines for Compliance

Sample Size Table

90% Confidence Interval

Number of Originations of Purchases	*Sample Size*	
	10% Precision	**15% Precision**
10	9	8
50	34	24
100	50	31
200	67	37
300	76	39
400	81	40
500	84	41
600	86	42
700	88	42
800	89	42
900	91	43
1,000	92	43
1,250	93	43
1,500	94	43
1,750	95	44
2,000	96	44
2,250	96	44
2,500	97	44
2,750	97	44
3,000	97	44
3,500	98	44
4,000	98	44
4,500	98	44
5,000	99	44

Random Numbers

0.38200	0.11692	0.54509	0.93725
0.10068	0.76571	0.03854	0.57637
0.59648	0.80123	0.99829	0.71999
0.89911	0.75829	0.05795	0.95322
0.88461	0.16840	0.78448	0.21992
0.95846	0.17753	0.22163	0.14505
0.01450	0.68123	0.55965	0.82025
0.40742	0.32841	0.59865	0.06351
0.86325	0.15769	0.81817	0.16541
0.13858	0.12033	0.16309	0.95004
0.24503	0.09137	0.57833	0.06900
0.04547	0.47011	0.10123	0.56258
0.03238	0.35252	0.37065	0.22309
0.16413	0.46727	0.11570	0.23917
0.21961	0.88348	0.51720	0.43397
0.01709	0.71441	0.01358	0.91305
0.28504	0.40043	0.08927	0.40794
0.34309	0.05341	0.66530	0.25922
0.55364	0.71868	0.53526	0.80044
0.35737	0.07834	0.60927	0.08249
0.37184	0.74892	0.40172	0.44646
0.35560	0.54076	0.28321	0.44240
0.91031	0.09787	0.45540	0.53639
0.46602	0.09870	0.20899	0.47337
0.42616	0.16886	0.47710	0.11240
0.30390	0.97241	0.56795	0.02460
0.97571	0.32383	0.66408	0.76263
0.80667	0.07096	0.60707	0.73745
0.99124	0.66311	0.57186	0.90796
0.25626	0.17273	0.33290	0.62673
0.95169	0.92596	0.47371	0.73421
0.05344	0.89953	0.10895	0.25645
0.70504	0.54039	0.54143	0.74697
0.81652	0.64925	0.19565	0.82986
0.97250	0.57942	0.97919	0.23957
0.46632	0.46541	0.08670	0.56990
0.30021	0.93738	0.79952	0.79647
0.75021	0.15278	0.82580	0.27607
0.35148	0.04978	0.93988	0.42332
0.77566	0.91806	0.45799	0.53157
0.07434	0.56850	0.50566	0.13248
0.19843	0.55220	0.50697	0.32572
0.06406	0.19382	0.71819	0.93927

(This page intentionally left blank.)

XII. Community Reinvestment Act Performance Evaluation Templates

Contents

Small Institution	XII–1.1
Intermediate Small Institution, Intrastate	XII-2.1
Intermediate Small Institution, Interstate	XII-3.1
Large Institution	XII-4.1
Strategic Plan	XII-5.1
Wholesale and Limited Purpose	XII-6.1

(This page intentionally left blank.)

SAMPLE SMALL INSTITUTION PERFORMANCE EVALUATION*

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

* This is a sample format created for an institution operating in one assessment area in only one state. It should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

TABLE OF CONTENTS

Institution's CRA Rating 1

Scope of Examination 1

Description of Institution 1

Description of Assessment Area 1

Conclusions with Respect to Performance Criteria 2

INSTITUTION'S CRA RATING: This institution is rated _____.

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. At a minimum, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis.

DESCRIPTION OF INSTITUTION

Write a brief description of the institution's ability to meet various credit needs based on its financial condition and size, product offerings, prior performance, legal impediments and other factors. Information that may be important to consider includes relationships with a holding company or affiliates, total assets, asset/loan portfolio mix, primary business focus, branching network, and any merger or acquisition activity.

DESCRIPTION OF (*Name of ASSESSMENT AREA)*

Describe the assessment area(s) under review by including appropriate information (and any trends) on the population, median income, employment conditions (including major employers), and community credit needs and business opportunities identified through outreach activities. Include, as appropriate, a discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation.

CONCLUSIONS WITH RESPECT TO PERFORMANCE CRITERIA

Discuss the institution's CRA performance. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the performance criteria were analyzed in order to rate the institution. Examiners have the flexibility to discuss the five performance criteria in the order of their importance, rather than the order in which they appear in the regulation.

In addition to the information provided on the core criteria, the performance evaluation should include information on qualified investments and the provision of services, if used to support an Outstanding rating.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with the laws relating to discrimination and other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines.

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts might still be appropriate.
>
> When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulations(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliate) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

SAMPLE INTERMEDIATE SMALL INSTITUTION PERFORMANCE EVALUATION FOR INTRASTATE INSTITUTIONS*

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

* This is a sample format created for an institution operating in one assessment area(s) in only one state. It should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

TABLE OF CONTENTS

Institution's CRA Rating 1

Scope of Examination 1

Description of Institution 1

Description of Assessment Area 1

Conclusions with Respect to Performance Tests 2

Intermediate Small Institution Performance Evaluation

INSTITUTION'S CRA RATING: This institution is rated _____.
The Lending Test is rated: _____.
The Community Development Test is rated: _____.

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. At a minimum, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis.

DESCRIPTION OF INSTITUTION

Write a brief description of the institution's ability to meet the needs of its community, including retail and community development needs, based on its financial condition and size, product offerings, prior performance, legal impediments and other factors. Information that may be important to consider includes relationships with a holding company or affiliates, total assets, asset/loan portfolio mix, primary business focus, branching network, and any merger or acquisition activity.

DESCRIPTION OF (*Name of ASSESSMENT AREA)*

Describe the assessment area(s) under review by including appropriate information (and any trends) on the population, median income, employment conditions (including major employers), business opportunities identified through outreach activities, and the needs of the community, including community development needs. Include, as appropriate, a discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS

Discuss the institution's CRA performance. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their

respective performance criteria, as well as relevant information from the performance context, factored into the institution's rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with laws relating to discrimination or other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines:

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts might still be appropriate.
>
> When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulation(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliate) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

SAMPLE INTERMEDIATE SMALL INSTITUTION PERFORMANCE EVALUATION
FOR INTERSTATE INSTITUTIONS

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

TABLE OF CONTENTS*

I. Institution Rating……. 1

II. Institution
- a. Scope of Examination…….. 1
- b. Description of Institution……. 1
- c. Conclusions with Respect to Performance Tests…… 1

III. Multistate Metropolitan Area
- a. Multistate Metropolitan Area Rating..... 3
- b. Scope of Examination..... 3
- c. Description of Institution's Operations 3
- d. Conclusions with Respect to Performance Tests..... 4

IV. State
- a. Summary
  - i. State Rating..... 5
  - ii. Scope of Examination..... 5
  - iii. Description of Institution's Operations 5
  - iv. Conclusions with Respect to Performance Tests.... 6
- b. Metropolitan Area (reviewed using full-scope review)
  - i. Description of Institution's Operations 7
  - ii. Conclusions with Respect to Performance Tests.... 7
- c. Metropolitan Area (reviewed using limited-scope review)
  - i. Description of Institution's Operations 8
  - ii. Conclusions with Respect to Performance Tests.... 8
- d. Nonmetropolitan Statewide Area (reviewed using full-scope review)
  - i . Description of Institution's Operations 9
  - ii. Conclusions with Respect to Performance Tests.... 9
- e. Nonmetropolitan Statewide Area (reviewed using limited-scope review)
  - i . Description of Operations 10
  - ii.. Conclusions with Respect to Performance Tests..... 10

V. Appendix
- A. Scope of Examination Tables ……11
- B. Summary of State and Multistate MSA Ratings ……12
- C. General Definitions ……13

* This table of contents is a sample for a multistate institution, and should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

INSTITUTION

INSTITUTION'S CRA RATING: This institution is rated: _____.
The Lending Test is rated: _____.
The Community Development Test is rated: _____.

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. At a minimum, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis.

DESCRIPTION OF INSTITUTION

Write a brief description of the institution's ability to meet the needs of its community, including retail and community development needs, based on its financial condition and size, product offerings, prior performance, legal impediments and other factors. Information that may be important to consider includes relationships with a holding company or affiliates, total assets, asset/loan portfolio mix, primary business focus, branching network, and any merger or acquisition activity.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS

Discuss the institution's CRA performance. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their respective performance criteria, as well as relevant information from the performance context, factored into the institution's rating.[1] Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

[1] The net loan-to-deposit ratio and percentage of loans and other lending-related activity in the assessment area only apply to the institution overall. No discussion of these performance criteria applies to sections of the performance evaluation relating to states, multistate metropolitan areas, and assessment areas.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with laws relating to discrimination or other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines:

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts may still be appropriate.
>
> When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulation(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliate) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

MULTISTATE METROPOLITAN AREA

CRA RATING FOR (Name of Multistate Metropolitan Area, including State Names)[2]: _____.
The Lending Test is rated: _____.
The Community Development Test is rated: _____.

[Complete for each multistate metropolitan area where an institution has branches in two or more states within the multistate metropolitan area.]

Summarize the major factors supporting the institution's multistate metropolitan area rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the multistate metropolitan area. Discuss how CRA activities in the multistate metropolitan area were reviewed (using full-scope or limited-scope review). If meaningful, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Multistate Metropolitan Area)*

Describe the institution's operations within the multistate metropolitan area, including a description of each of the assessment area(s) that the bank serves within the multistate metropolitan area. Information that may be important includes: population, median income, employment conditions (including major employers), the number of branches within the assessment area and the number of individuals and geographies in each income category, business opportunities identified through outreach activities, and the needs of the community,

[2]This rating reflects performance within the multistate metropolitan area. The statewide evaluations are adjusted and do not reflect performance in the parts of those states contained within the multistate metropolitan area.

including community development needs. Include, as appropriate, a discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using the examination procedures.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Multistate Metropolitan Area)*

Discuss the institution's CRA performance within the multistate metropolitan area. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their respective performance criteria, as well as relevant information from the performance context, factored into the multistate metropolitan area rating. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the multistate metropolitan area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

STATE

CRA RATING FOR (Name of State)[3]: _____.
The Lending Test is rated: _____.
The Community Development Test is rated: _____.

[Complete for each state in which an institution has branches if the institution has branches in two or more states. For an institution that has branches in only one state, complete the metropolitan area and nonmetropolitan statewide area presentations only for that state, as applicable in light of the location of the branches.]

Summarize the major factors supporting the institution's state rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the state. Discuss how CRA activities in the state were reviewed (using full-scope or limited-scope review). If meaningful, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of State)*

Describe the institution's operations within the state, including a description of each of the assessment area(s) that the bank serves within the state. Information that may be important includes: population, median income, employment conditions (including major employers), the number of branches within the assessment area and the number of individuals and geographies in each income category, business opportunities identified through outreach activities, and the needs of the community, including community development needs. Include, as appropriate, a

[3]For institutions with branches in two or more states in a multistate metropolitan area, this statewide evaluation is adjusted and does not reflect performance in the parts of those states contained within the multistate metropolitan area. Refer to the multistate metropolitan area rating and discussion for the rating and evaluation of the institution's performance in that area.

discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using the examination procedures.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of State)*

Discuss the institution's CRA performance within the state. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their respective performance criteria, as well as relevant information from the performance context, factored into the state rating. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the state. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

(For metropolitan areas with some or all assessment areas reviewed using full-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (*Name of Metropolitan Area and State)*

Describe the institution's operations within the metropolitan area, including a description of each of the assessment area(s) that the bank serves within the metropolitan area. Information that may be important includes: population, median income, employment conditions (including major employers), the number of branches within the assessment area and the number of individuals and geographies in each income category, business opportunities identified through outreach activities, and the needs of the community, including community development needs. Include, as appropriate, a discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using the examination procedures.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS *(Name of Metropolitan Area and State)*

Discuss the institution's CRA performance within the metropolitan area. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their respective performance criteria, as well as relevant information from the performance context, factored into the metropolitan area rating. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the metropolitan area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

(For each metropolitan area where assessment areas were reviewed using limited-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Metropolitan Area and State)*

Describe the institution's operations within the metropolitan area, including a description of each of the assessment area(s) that it serves within the metropolitan area. Include key information such as the number of branches within the assessment areas and the number of individuals and geographies in each income category.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Metropolitan Area and State)*

Summarize the facts and data that were reviewed, including demographic information on the assessment areas and information on the institution's performance. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record [overall/in the state], using one of the two following statements:

a. The institution's [lending, community development] performance in the area is consistent with the institution's [lending, community development] performance overall [or in the state].

b. The institution's [lending, community development] performance in the area [exceeds/ is below], the institution's [lending, community development] performance for the [institution/ state]; however, it does not change the rating for the [institution/ state].

NONMETROPOLITAN STATEWIDE AREAS[4]

(if some or all of the assessment areas within the nonmetropolitan statewide area were reviewed using full-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Nonmetropolitan Area and State)*

Describe the institution's operations within the nonmetropolitan statewide area, including a description of each of the assessment area(s) that the bank serves within the nonmetropolitan statewide area. Information that may be important includes: population, median income, employment conditions (including major employers), the number of branches within the assessment area and the number of individuals and geographies in each income category, business opportunities identified through outreach activities, and the needs of the community, including community development needs. Include, as appropriate, a discussion of the number and type of CRA-related community contacts that were consulted and relevant information incorporated, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using the examination procedures.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Area and State)*

Discuss the institution's CRA performance within the nonmetropolitan statewide area. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the lending and the community development tests, and their respective performance criteria, as well as relevant information from the performance context, factored into the nonmetropolitan statewide area rating. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the nonmetropolitan statewide area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

[4]The discussion of an institution's CRA performance within a nonmetropolitan statewide area is only required for institutions with branches in two or more states. A separate discussion of CRA performance within a nonmetropolitan statewide area for intrastate banks that have branches in metropolitan and nonmetropolitan areas is optional because the performance in the nonmetropolitan areas have been reviewed and discussed in the overall evaluation of the institution. Examiners may wish to discuss in greater detail, however, the assessment areas within the nonmetropolitan areas that were reviewed for intrastate banks with branches in metropolitan and nonmetropolitan areas or for intrastate banks with branches only in nonmetropolitan areas.

NONMETROPOLITAN STATEWIDE AREAS[5]

(if some or all of the assessment areas within the nonmetropolitan statewide area were reviewed using limited-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Nonmetropolitan Area and State)*

Describe the institution's operations within the nonmetropolitan statewide area, including a description of each of the assessment area(s) that it serves. Include key information such as the number of branches within each assessment area and the number of individuals and geographies in each income category.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Area and State)*

Summarize the facts and data that were reviewed, including demographic information on the assessment areas and information on the institution's performance. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record [overall/in the state], using one of the two following statements:

a. The institution's [lending, community development] performance in the area is consistent with the institution's [lending, community development] performance overall [or in the state].

b. The institution's [lending, community development] performance in the area [exceeds/ is below], the institution's [lending, community development] performance for the [institution/ state]; however, it does not change the rating for the [institution/ state].

[5]The discussion of an institution's CRA performance within a nonmetropolitan statewide area is only required for institutions with branches in two or more states. A separate discussion of CRA performance within a nonmetropolitan statewide area for intrastate banks that have branches in metropolitan and nonmetropolitan areas is optional because the performance in the nonmetropolitan areas have been reviewed and discussed in the overall evaluation of the institution. Examiners may wish to discuss in greater detail, however, the assessment areas within nonmetropolitan areas that were reviewed using the full-scope review for intrastate banks with branches in metropolitan and nonmetropolitan areas or for intrastate banks with branches only in nonmetropolitan areas.

APPENDIX A

SCOPE OF EXAMINATION TABLE

Institutions with multiple assessment areas or affiliates subject to examination may warrant the use of charts that convey information regarding the scope of the examination. The following chart may be used as a supplement to the discussion of the scope or in lieu thereof.

Unknown Bank
SCOPE OF EXAMINATION:
TIME PERIOD REVIEWED:
PRODUCTS REVIEWED:

LIST OF AFFILIATES AND PRODUCTS REVIEWED		
AFFILIATE(S):	**AFFILIATE RELATIONSHIP:**	**PRODUCTS REVIEWED:**

There is a statutory requirement that the written evaluation of a multistate institution's performance must list the individual branches examined in each state.

LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA:	TYPE OF EXAMINATION:	BRANCHES VISITED:	OTHER INFORMATION:

APPENDIX B

SUMMARY OF STATE AND MULTISTATE MSA RATINGS			
STATE OR MULTISTATE MSA NAME:	LENDING TEST RATING:	COMMUNITY DEVELOPMENT TEST RATING:	OVERALL STATE RATING:

APPENDIX C

GENERAL DEFINITIONS

Aggregate lending: The number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

Area Median Income: The median family income for the MSA, if a person or geography is located in an MSA; or the statewide non-metropolitan median family income, it a person or geography is located outside an MSA.

Census tract: A small subdivision of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan statistical areas. Census tracts usually have between 2,500 and 8,000 persons, and their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

Community development: (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; (2) community services targeted to low- or moderate-income individuals; (3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or, (4) activities that revitalize or stabilize:

- (i) Low-or moderate-income geographies;
- (ii) Designated disaster areas; or
- (iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the agencies, based on-
  - a. Rates of poverty, unemployment, and population loss; or
  - b. Population size, density, and dispersion. Activities that revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

Community Development Corporation (CDC): A CDC allows banks and holding companies to make equity type of investments in community development projects. Bank CDCs can develop innovative debt instruments or provide near-equity investments tailored to the development needs of the community as well as to the financial and marketing needs of the bank. A CDC may purchase, own, rehabilitate, construct, manage and sell real property. Also, it may make equity or debt investments in development projects and in local businesses. The CDC

activities are expected to directly benefit low- and moderate-income groups, and the investment dollars should not represent an undue risk on the banking organization.

Community Development Financial Institutions (CDFIs): CDFIs are private intermediaries (either for profit or nonprofit) with community development as their primary mission. A CDFI facilitates the flow of lending and investment capital into distressed communities and to individuals who have been unable to take advantage of the services offered by traditional financial institutions. Some basic types of CDFIs include community development banks, community development loan funds, community development credit unions, microenterprise funds, and community development venture capital funds. A certified CDFI must meet eligibility requirements, which include: having a primary mission of promoting community development; serving an investment area or target population; providing development services; maintaining accountability to residents of its investment area or targeted population through representation on its governing board of directors, or by other means; and not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state

Consumer loan(s): A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans.

Family: Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family, which is further classified into 'male householder' (a family with a male householder and no wife present) or 'female householder' (a family with a female householder and no husband present).

Full-scope review: Performance under the Lending, Investment, and Service Tests is analyzed considering performance context, quantitative factors (for example, geographic distribution, borrower distribution, and total number and dollar amount of investments), and qualitative factors (for example, innovativeness, complexity, and responsiveness).

Geography: A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act (HMDA): The statute that requires certain mortgage lenders that do business or have banking offices in a metropolitan statistical area to file annual summary reports of their mortgage lending activity. The reports include such data as the race, gender, and the income of applications, the amount of loan requested, and the disposition of the application (for example, approved, denied, and withdrawn).

Home mortgage loans: Includes home purchase and home improvement loans as defined in the HMDA regulation. This definition also includes multifamily (five or more families) dwelling loans, loans for the purchase of manufactured homes and refinancings of home improvement and home purchase loans.

Household: Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

HUD Adjusted Income Data: The U.S. Department of Housing and Urban Development (HUD) issues annual estimates which update median family income from the metropolitan and non-metropolitan areas. HUD starts with the most recent U.S. Census data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Limited-scope review: Performance under the Lending, Investment, and Service Tests is analyzed using only quantitative factors (for example, geographic distribution, borrower distribution, total number and dollar amount of investments, and branch distribution).

Low-income: Individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

Low Income Housing Tax Credits: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended, which is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department, through the Internal Revenue Service, distributes low-income housing tax credits to housing credit agencies. The housing agencies allocate tax credits on a competitive basis. Developers who acquire, rehabilitate, or construct low-income rental housing may keep their tax credits or sell them to corporations or investor groups, who, as owners of these properties, will be able to reduce their own federal tax payments. The credit can be claimed annually for ten consecutive years. For a project to be eligible, the developer must set aside a specific percentage of units for occupancy by low-income residents. The set-aside requirement remains in place throughout the compliance period, usually 30 years.

Market share: The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

Median Income: The median income divides the income distribution into two equal parts, one having incomes above the median and other having incomes below the median.

Metropolitan area (MA): A metropolitan statistical area (MSA) or a metropolitan division (MD) as defined by the Office of Management and Budget. A MSA is a core area containing at least one urbanized area of 50,000 or more inhabitants, together with adjacent communities having a high degree of economic and social integration with that core. A MD is a division of a MSA based on specific criteria including commuting patterns. Only a MSA that has a population of at least 2.5 million may be divided into MDs.

Middle-income: Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent, in the case of a geography.

Moderate-income: Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent, in the case of a geography.

Multifamily: Refers to a residential structure that contains five or more units**.**

Non-Metropolitan Area: All areas outside of metropolitan areas. The definition of non-metropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies; for example, there is generally both urban and rural territory within both metropolitan and non-metropolitan areas.

Other products: Includes any unreported optional category of loans for which the institution collects and maintains data for consideration during a CRA examination. Examples of such activity include consumer loans and other loan data an institution may provide concerning its lending performance.

Owner-occupied units: Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

Qualified investment: A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

Rated area: A rated area is a state or multistate metropolitan area. For an institution with domestic branches in only one state, the institution's CRA rating would be the state rating. If an institution maintains domestic branches in more than one state, the institution will receive a rating for each state in which those branches are located. If an institution maintains domestic branches in two or more states within a multistate metropolitan area, the institution will receive a rating for the multistate metropolitan area.

Small loan(s) to business(es): A loan included in 'loans to small businesses' as defined in the Consolidated Report of Condition and Income (Call Report) and the Thrift Financial Reporting (TFR) instructions. These loans have original amounts of $1 million or less and typically are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans. However, thrift institutions may also exercise the option to report loans secured by nonfarm residential real estate as "small business loans" if the loans are reported on the TFR as non-mortgage, commercial loans.

Small loan(s) to farm(s): A loan included in ‘loans to small farms’ as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $500,000 or less and are either secured by farmland, or are classified as loans to finance agricultural production and other loans to farmers.

Upper-income: Individual income that is more than 120 percent of the area median income, or a median family income that is more than 120 percent, in the case of a geography.

(This page intentionally left blank.)

SAMPLE LARGE INSTITUTION PERFORMANCE EVALUATION

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

TABLE OF CONTENTS*

I. Institution Rating
- a. Overall Rating.....……...…… 1
- b. Performance Test Ratings Table .....…. 1
- c. Summary of Major Factors Supporting Rating .....….. 1

II. Institution
- a. Description of Institution…….. 2
- b. Scope of Examination…… 2
- c. Conclusions with Respect to Performance Tests…… 2

III. Multistate Metropolitan Area
- a. Multistate Metropolitan Area Rating..... 4
- b. Scope of Examination..... 4
- c. Description of Institution's Operations 5
- d. Conclusions with Respect to Performance Tests..... 5

IV. State
- a. Summary
  - i. State Rating..... 6
  - ii. Scope of Examination..... 6
  - iii. Description of Institution's Operations 7
  - iv. Conclusions with Respect to Performance Tests.... 7
- b. Metropolitan Area (reviewed using full-scope review)
  - i. Description of Institution's Operations 8
  - ii. Conclusions with Respect to Performance Tests.... 8
- c. Metropolitan Area (reviewed using limited-scope review)
  - i. Description of Institution's Operations 9
  - ii. Conclusions with Respect to Performance Tests.... 9
- d. Nonmetropolitan Statewide Area (reviewed using full-scope review)
  - i . Description of Institution's Operations 10
  - ii. Conclusions with Respect to Performance Tests.... 10
- e. Nonmetropolitan Statewide Area (reviewed using limited-scope review)
  - i . Description of Institution's Operations 12
  - ii. Conclusions with Respect to Performance Tests..... 12

V. Appendix
- A. Scope of Examination Tables 13
- B. Summary of State and Multistate Metropolitan Area Ratings.. 15
- C. General Definitions…… 16
- D. Standard PE Language ……...20

* This table of contents is a sample for a large, multistate institution, and should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

.

INSTITUTION'S CRA RATING

INSTITUTION'S CRA RATING: **This institution is rated: _____**

The following table indicates the performance level of name of financial institution with respect to the lending, investment, and service tests.
[Indicate the performance level under each criterion by marking an "X" in the appropriate row.]

PERFORMANCE LEVELS	NAME OF FINANCIAL INSTITUTION		
	PERFORMANCE TESTS		
	Lending Test*	**Investment Test**	**Service Test**
Outstanding			
High Satisfactory			
Low Satisfactory			
Needs to Improve			
Substantial Noncompliance			

* Note: The lending test is weighted more heavily than the investment and service tests when arriving at an overall rating.

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

INSTITUTION

DESCRIPTION OF INSTITUTION

Write a brief description of the institution. Include relevant information regarding the institution's holding company and affiliates, if any, the states and assessment areas served, the institution's ability to meet various credit needs based on its financial condition and size, product offerings, prior performance, legal impediments and other factors. Other information that may be important includes total assets, asset/loan portfolio mix, primary business focus, branching network, and any merger or acquisition activity.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. At a minimum, discuss the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, the institution's assessment areas and whether its activities in the assessment areas were reviewed using a full-scope review and the time period covered in the review.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS

Discuss the institution's CRA performance. The facts, data, and analyses that were used to form a conclusion about the rating must be reflected in the performance evaluation. The narrative should clearly demonstrate how the results of each of the performance test analyses and relevant information from the performance context factored into the overall institution rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with laws relating to discrimination or other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines:

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts might still be appropriate.

When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulation(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliate) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

MULTISTATE METROPOLITAN AREA

CRA RATING FOR (Name of Multistate Metropolitan Area, including State Names)[1]:_____.
The Lending Test is rated:_____.
The Investment Test is rated:_____.
The Service Test is rated:_____.

[Complete for each multistate metropolitan area where an institution has branches in two or more states within the multistate metropolitan area.]

Summarize the major factors supporting the institution's multistate metropolitan area rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the multistate metropolitan area. Discuss how CRA activities in the multistate metropolitan area were reviewed (using full-scope or limited-scope review)., If meaningful, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

[1]This rating reflects performance within the multistate metropolitan area. The statewide evaluations are adjusted and do not reflect performance in the parts of those states contained within the multistate metropolitan area.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Multistate Metropolitan Area)*

Describe the institution's operations within the multistate metropolitan area, including a description of each of the assessment area(s) that it serves within the multistate metropolitan area. Information that may be important includes: total assets; asset/loan portfolio mix; primary business focus; branching network; and any merger or acquisition activity. For each of the assessment areas served, include key information such as the number of branches within the assessment area and the number of individuals and geographies in each income category. Other information that may be important includes population trends, type and condition of housing stock, available employment, and general business activity. Also include a summary of any credit needs identified and particular lending opportunities which were noted. Discuss, if appropriate, the number and kinds of CRA-related community contacts that were consulted and relevant information obtained and used, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using a full-scope review.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Multistate Metropolitan Area)*

Discuss the institution's CRA performance within the multistate metropolitan area. The narrative should clearly demonstrate how the results of each of the performance test analyses factored into the rating. Support your conclusions with an analysis of facts and data, such as the number and volume of loans and investments, by type, across geographies and borrower categories in the assessment areas reviewed using a full-scope review. In addition, support your conclusions with a discussion of facts and data for assessment areas reviewed using a limited-scope review when appropriate. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the multistate metropolitan area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

STATE

CRA RATING FOR (Name of State)[2]:_____.
The Lending Test is rated:_____.
The Investment Test is rated:_____.
The Service Test is rated:_____.

[Complete for each state in which an institution has branches if the institution has branches in two or more states. For an institution that has branches in only one state, complete the metropolitan area and nonmetropolitan statewide area presentations only for that state, as applicable in light of the location of the branches.]

Summarize the major factors supporting the institution's state rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the state. Discuss how CRA activities in the state were reviewed (using full-scope or limited-scope review). If meaningful, discuss the time period covered in the review, the specific lending products reviewed, the names of (any) affiliates reviewed and their corresponding lending products, and how they were considered in the evaluation. Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of State)*

[2]For institutions with branches in two or more states in a multistate metropolitan area, this statewide evaluation is adjusted and does not reflect performance in the parts of those states contained within the multistate metropolitan area. Refer to the multistate metropolitan area rating and discussion for the rating and evaluation of the institution's performance in that area.

Describe the institution's operations within the state, including a description of the assessment area(s) served. Information that may be important includes: total statewide assets; asset/loan portfolio mix; primary business focus; branching network; any merger or acquisition activity; and a brief description of the metropolitan areas, nonmetropolitan areas, and assessment areas served within the state.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of State)*

Discuss the institution's CRA performance within the state. The facts, data and analyses that were used to form a conclusion about the rating should be reflected in the performance evaluation. The narrative should clearly demonstrate how the results of each of the performance test analyses factored into the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

(For metropolitan areas with some or all assessment areas reviewed using full-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Metropolitan Area and State)*

Describe the institution's operations within the metropolitan area, including a description of each of the assessment area(s) that it serves within the metropolitan area. Information that may be important includes: the number of branches within the assessment areas and the number of individuals and geographies in each income category. Other information that may be important includes population trends, income levels, type and condition of housing stock, available employment, and general business activity. Also include a summary of any credit needs identified and particular lending opportunities which were noted. Discuss, if appropriate, the number and kinds of CRA-related community contacts that were consulted and relevant information obtained and used, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using a full-scope review. Charts and tables may be used to effectively present information as appropriate, particularly for assessment areas that do not receive a full-scope review.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Metropolitan Area and State)*

Discuss the institution's CRA performance within the metropolitan area. The narrative should clearly demonstrate how the results of each of the performance test analyses factored into the conclusions. Support your conclusions with an analysis of facts and data, such as the number and volume of loans and investments, by type, across geographies and borrower categories in the assessment areas reviewed using a full-scope review. In addition, support your conclusions with a discussion of facts and data for assessment areas reviewed using a limited-scope review when appropriate. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the metropolitan area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

(For each metropolitan area where assessment areas were reviewed using limited-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Metropolitan Area and State)*

Describe the institution's operations within the metropolitan area, including a description of each of the assessment area(s) that it serves within the metropolitan area. Include key information such as the number of branches within the assessment areas and the number of individuals and geographies in each income category.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Metropolitan Area and State)*

Summarize the facts and data that were reviewed, including demographic information on the assessment areas and information on the institution's performance. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record [overall/in the state], using one of the two following statements:

a. The institution's [lending, investment, service] performance in the area is consistent with the institution's [lending, investment, service] performance overall [or in the state].

b. The institution's [lending, investment, service] performance in the area [exceeds/ is below], the institution's [lending, investment, service] performance for the [institution/ state]; however, it does not change the rating for the [institution/ state].

NONMETROPOLITAN STATEWIDE AREAS[3]

(if some or all of the assessment areas within the nonmetropolitan statewide area were reviewed using full-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Nonmetropolitan Area and State)*

Describe the institution's operations within the nonmetropolitan statewide area, including a description of each of the assessment area(s) that it serves within the nonmetropolitan statewide area. Information that may be important includes: the number of branches within the assessment areas and the number of individuals and geographies in each income category. Other information that may be important includes population trends, income levels, type and condition of housing stock, available employment, and general business activity. Also include a summary of any credit needs identified and particular lending opportunities which were noted. Discuss, if appropriate, the number and kinds of CRA-related community contacts that were consulted and relevant information obtained and used, if any, in the CRA evaluation. Typically, more detailed information will be presented for assessment areas reviewed using a full-scope review. Charts and tables may be used to effectively present information as appropriate, particularly for assessment areas that do not receive a full-scope review.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Area and State)*

Discuss the institution's CRA performance within the nonmetropolitan statewide area. The facts, data and analyses that were used to form a conclusion should be reflected in the narrative. The narrative should clearly demonstrate how the results of each of the performance test analyses factored into the conclusions for the nonmetropolitan statewide area. Support your conclusions with an analysis of facts and data, such as the number and volume of loans and investments, by type, across geographies and borrower categories in the assessment areas reviewed using a full-scope review. In addition, support your conclusions with a discussion of facts and data for assessment areas reviewed using a limited-scope review when appropriate. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in

[3]The discussion of an institution's CRA performance within a nonmetropolitan statewide area is only required for institutions with branches in two or more states. A separate discussion of CRA performance within a nonmetropolitan statewide area for intrastate banks that have branches in metropolitan and nonmetropolitan areas is optional because the performance in the nonmetropolitan areas have been reviewed and discussed in the overall evaluation of the institution. Examiners may wish to discuss in greater detail, however, the assessment areas within nonmetropolitan areas that were reviewed using a full-scope review for intrastate banks with branches in metropolitan and nonmetropolitan areas or for intrastate banks with branches only in nonmetropolitan areas.

the nonmetropolitan statewide area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

NONMETROPOLITAN STATEWIDE AREAS[4]

(if some of the assessment areas within the nonmetropolitan statewide area were reviewed using limited-scope review)

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Nonmetropolitan Area and State)*

Describe the institution's operations within the nonmetropolitan statewide area, including a description of each of the assessment area(s) that it serves. Include key information such as the number of branches within each assessment area and the number of individuals and geographies in each income category.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Statewide Area)*

Summarize the facts and data that were reviewed, including demographic information on the assessment areas and information on the institution's performance. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record [overall/in the state], using one of the two following statements:

a. The institution's [lending, investment, service] performance in the area is consistent with the institution's [lending, investment, service] performance overall [or in the state].

b. The institution's [lending, investment, service] performance in the area [exceeds/ is below], the institution's [lending, investment, service] performance for the [institution/ state]; however, it does not change the rating for the [institution/ state].

[4]The discussion of an institution's CRA performance within a nonmetropolitan statewide area is only required for institutions with branches in two or more states. A separate discussion of CRA performance within a nonmetropolitan statewide area for intrastate banks that have branches in metropolitan and nonmetropolitan areas is optional. Examiners may wish to discuss in greater detail, however, the assessment areas within the nonmetropolitan areas that were reviewed using a full-scope review for intrastate banks with branches in metropolitan and nonmetropolitan areas or for intrastate banks with branches only in nonmetropolitan areas.

APPENDIX A

SCOPE OF EXAMINATION TABLE

Large institutions with multiple assessment areas or affiliates subject to examination may warrant the use of charts that convey information regarding the scope of the examination. The following chart may be used as a supplement to the discussion of the scope or in lieu thereof.

Institution Name
SCOPE OF EXAMINATION:
TIME PERIOD REVIEWED:
PRODUCTS REVIEWED:

LIST OF AFFILIATES AND PRODUCTS REVIEWED		
AFFILIATE(S):	**AFFILIATE RELATIONSHIP:**	**PRODUCTS REVIEWED:**

There is a statutory requirement that the written evaluation of a multistate institution's performance must list the individual branches examined in each state.

LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA:	TYPE OF EXAMINATION:	BRANCHES VISITED:	OTHER INFORMATION:

APPENDIX B

SUMMARY OF STATE AND MULTISTATE MSA RATINGS				
STATE OR MULTISTATE MSA NAME:	LENDING TEST RATING:	INVESTMENT TEST RATING:	SERVICE TEST RATING:	OVERALL STATE RATING:

APPENDIX C

GENERAL DEFINITIONS

Aggregate lending: The number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

Area Median Income: The median family income for the MSA, if a person or geography is located in an MSA; or the statewide non-metropolitan median family income, it a person or geography is located outside an MSA.

Census tract: A small subdivision of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan statistical areas. Census tracts usually have between 2,500 and 8,000 persons, and their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

Community development: (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; (2) community services targeted to low- or moderate-income individuals; (3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or, (4) activities that revitalize or stabilize:

- (i) Low-or moderate-income geographies;
- (ii) Designated disaster areas; or
- (iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the agencies, based on-
  - a. Rates of poverty, unemployment, and population loss; or
  - b. Population size, density, and dispersion. Activities that revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

Community Development Corporation (CDC): A CDC allows banks and holding companies to make equity type of investments in community development projects. Bank CDCs can develop innovative debt instruments or provide near-equity investments tailored to the development needs of the community as well as to the financial and marketing needs of the bank.

A CDC may purchase, own, rehabilitate, construct, manage and sell real property. Also, it may make equity or debt investments in development projects and in local businesses. The CDC activities are expected to directly benefit low- and moderate-income groups, and the investment dollars should not represent an undue risk on the banking organization.

Community Development Financial Institutions (CDFIs): CDFIs are private intermediaries (either for profit or nonprofit) with community development as their primary mission. A CDFI facilitates the flow of lending and investment capital into distressed communities and to individuals who have been unable to take advantage of the services offered by traditional financial institutions. Some basic types of CDFIs include community development banks, community development loan funds, community development credit unions, microenterprise funds, and community development venture capital funds. A certified CDFI must meet eligibility requirements, which include: having a primary mission of promoting community development; serving an investment area or target population; providing development services; maintaining accountability to residents of its investment area or targeted population through representation on its governing board of directors, or by other means; and not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state

Consumer loan(s): A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans.

Family: Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family, which is further classified into 'male householder' (a family with a male householder and no wife present) or 'female householder' (a family with a female householder and no husband present).

Full-scope review: Performance under the Lending, Investment, and Service Tests is analyzed considering performance context, quantitative factors (for example, geographic distribution, borrower distribution, and total number and dollar amount of investments), and qualitative factors (for example, innovativeness, complexity, and responsiveness).

Geography: A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act (HMDA): The statute that requires certain mortgage lenders that do business or have banking offices in a metropolitan statistical area to file annual summary reports of their mortgage lending activity. The reports include such data as the race, gender, and

the income of applications, the amount of loan requested, and the disposition of the application (for example, approved, denied, and withdrawn).

Home mortgage loans: Includes home purchase and home improvement loans as defined in the HMDA regulation. This definition also includes multifamily (five or more families) dwelling loans, loans for the purchase of manufactured homes and refinancings of home improvement and home purchase loans.

Household: Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

HUD Adjusted Income Data: The U.S. Department of Housing and Urban Development (HUD) issues annual estimates which update median family income from the metropolitan and non-metropolitan areas. HUD starts with the most recent U.S. Census data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Limited-scope review: Performance under the Lending, Investment, and Service Tests is analyzed using only quantitative factors (for example, geographic distribution, borrower distribution, total number and dollar amount of investments, and branch distribution).

Low-income: Individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

Low Income Housing Tax Credits: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended, which is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department, through the Internal Revenue Service, distributes low-income housing tax credits to housing credit agencies. The housing agencies allocate tax credits on a competitive basis. Developers who acquire, rehabilitate, or construct low-income rental housing may keep their tax credits or sell them to corporations or investor groups, who, as owners of these properties, will be able to reduce their own federal tax payments. The credit can be claimed annually for ten consecutive years. For a project to be eligible, the developer must set aside a specific percentage of units for occupancy by low-income residents. The set-aside requirement remains in place throughout the compliance period, usually 30 years.

Market share: The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

Median Income: The median income divides the income distribution into two equal parts, one having incomes above the median and other having incomes below the median.

Metropolitan area (MA): A metropolitan statistical area (MSA) or a metropolitan division (MD) as defined by the Office of Management and Budget. A MSA is a core area containing at least one urbanized area of 50,000 or more inhabitants, together with adjacent communities having a high degree of economic and social integration with that core. A MD is a division of a MSA based on specific criteria including commuting patterns. Only a MSA that has a population of at least 2.5 million may be divided into MDs.

Middle-income: Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent, in the case of a geography.

Moderate-income: Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent, in the case of a geography.

Multifamily: Refers to a residential structure that contains five or more units.

Non-Metropolitan Area: All areas outside of metropolitan areas. The definition of non-metropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies; for example, there is generally both urban and rural territory within both metropolitan and non-metropolitan areas.

Other products: Includes any unreported optional category of loans for which the institution collects and maintains data for consideration during a CRA examination. Examples of such activity include consumer loans and other loan data an institution may provide concerning its lending performance.

Owner-occupied units: Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

Qualified investment: A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

Rated area: A rated area is a state or multistate metropolitan area. For an institution with domestic branches in only one state, the institution's CRA rating would be the state rating. If an institution maintains domestic branches in more than one state, the institution will receive a rating for each state in which those branches are located. If an institution maintains domestic branches in two or more states within a multistate metropolitan area, the institution will receive a rating for the multistate metropolitan area.

Small loan(s) to business(es): A loan included in 'loans to small businesses' as defined in the Consolidated Report of Condition and Income (Call Report) and the Thrift Financial Reporting (TFR) instructions. These loans have original amounts of $1 million or less and typically are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans. However, thrift institutions may also exercise the option to report loans secured by nonfarm residential real estate as "small business loans" if the loans are reported on the TFR as nonmortgage, commercial loans.

Small loan(s) to farm(s): A loan included in ‘loans to small farms’ as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $500,000 or less and are either secured by farmland, or are classified as loans to finance agricultural production and other loans to farmers.

Upper-income: Individual income that is more than 120 percent of the area median income, or a median family income that is more than 120 percent, in the case of a geography.

APPENDIX D

STANDARD PE LANGUAGE

LENDING TEST

Scope of Test

The lending test evaluates the institution's record of helping to meet the credit needs of its assessment area(s) by considering an institution's home mortgage, small business, small farm, and community development lending. The institution's lending performance is evaluated pursuant to the following criteria: 1) the volume of lending activity; 2) the proportion of lending within the assessment area(s); 3) the dispersion of loans and the number and amount of loans in low-, moderate-, middle- and upper-income geographies in the assessment area(s); 4) the distribution of loans among borrowers of low-, moderate-, middle- and upper-income levels and businesses (including farms) of different sizes; 5) the distribution of small business and small farm loans by loan amount at origination; 6) the volume of community development lending; and 7) the use of innovative or flexible lending practices. Performance under the lending test is weighted more heavily than the investment and service tests when arriving at an overall rating.

Community Development Lending:

Performance Criteria

The institution's community development lending activities are evaluated pursuant to the following criteria: 1) the extent to which community development lending opportunities have been made available to the institution; 2) the responsiveness of the institution's community development lending; and 3) the extent of leadership the institution has demonstrated in community development lending.

Innovative and Flexible Lending Practices:

Performance Criteria

The institution's innovative and flexible lending practices are evaluated pursuant to the following criteria: 1) the degree to which the loans serve low- and moderate-income creditworthy borrowers in new ways or serve groups of creditworthy borrowers not previously served by the institution; and 2) the success of each product serving low- and moderate-income borrowers, including the number and dollar volume of loans originated during the review period.

INVESTMENT TEST

Scope of Test

The investment test evaluates the institution's record of helping to meet the credit needs of its assessment area(s) through its use of qualified investments that benefit the assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Activities considered under the lending or service test may not be considered under the investment test. The institution's investment performance is evaluated pursuant to the following criteria: 1) the dollar amount of qualified investments; 2) the innovativeness or complexity of qualified investments; 3) the responsiveness of qualified investments to credit and community development needs; and 4) the degree to which the qualified investments are not routinely provided by private investors.

SERVICE TEST

Scope of Test

The service test evaluates the institution's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of its community development services. The institution's retail banking services are evaluated pursuant to the following criteria: 1) the distribution of the institution's branches among geographies of different income levels; 2) the record of opening and closing branches, particularly branches located in low- and moderate-income geographies or that primarily serve low- or moderate-income individuals; 3) the availability and effectiveness of alternate systems for delivering retail banking services; and 4) the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

In addition, the institution's community development services are evaluated pursuant to the following criteria: 1) the extent of community development services offered and used; 2) the innovativeness of community development services, including whether they serve low- and moderate-income customers in new ways or serve groups of customers not previously served; 3) the degree to which they serve low- and moderate-income areas or individuals; and 4) their responsiveness to available opportunities for community development services.

(This page intentionally left blank.)

SAMPLE STRATEGIC PLAN INSTITUTION EVALUATION*

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

* This table of contents is a sample for a large institution, and should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

TABLE OF CONTENTS

I. Institution Rating

a. Overall Rating. 1
b. Discussion. 1

II. Multistate Metropolitan Area Rating. 3

a. Discussion of assessment areas within multistate metropolitan area examined using a full-scope review
b. Facts and data for multistate metropolitan area assessment areas examined using a limited-scope review

III. State Rating. 5

a. Metropolitan Area Analysis. 6
i. Conclusions
ii. Discussion of assessment areas within metropolitan area examined using a full-scope review
iii. Facts and data for metropolitan area examined using a limited-scope review

b. Nonmetropolitan Statewide Area Analysis. 7
i. Conclusions
ii. Discussions of nonmetropolitan area assessment areas examined using a full-scope review
iii. Facts and data for nonmetropolitan area assessment areas examined using a limited-scope review

IV. Appendix

A. Scope of Examination Table 10
B. Summary of State and Multistate Metropolitan Area Ratings 11

INSTITUTION

INSTITUTION'S CRA RATING: **This institution is rated _____.**

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. Discuss how CRA activities were reviewed (using full-scope or limited-scope review). Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

CONCLUSIONS

Summarize the facts, data, and analyses that were used to determine the overall rating, based on the institution's plan goals and actual performance under the plan. The discussion should be organized broadly around the lending, investment and service goals, as applicable. If the institution has not substantially met its goals, discuss the effect, if any, changed circumstances may have on the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with laws relating to discrimination or other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines:

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts may still be appropriate.

When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulation(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliate) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

MULTISTATE METROPOLITAN AREA

CRA RATING FOR (Name of Multistate Metropolitan Area and States)_____.

[Complete for each multistate metropolitan area where an institution has branches in two or more states within the multistate metropolitan area.]

Summarize the major factors supporting the institution's multistate metropolitan area rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the multistate metropolitan area. Discuss how CRA activities in the multistate metropolitan area were reviewed (using full-scope or limited-scope review). When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Multistate Metropolitan Area)*

Describe the institution's operations within the multistate metropolitan area, including a description of each of the assessment areas that it serves within the multistate metropolitan area. Indicate how many of these assessment areas were reviewed using a full-scope review.

CONCLUSIONS WITH RESPECT TO PERFORMANCE IN *(Name of Multistate Metropolitan Area and States)*

Discuss the institution's CRA performance within the multistate metropolitan area. The facts, data, and analyses that were used to form a conclusion about the rating, as well as the institution's record in assessment areas in the multistate metropolitan area that were examined using a limited-scope review, should be reflected in the narrative. The discussion should be based on the institution's plan goals and actual performance under the plan, and organized around the lending, investment and service goals, as applicable. If the institution has not

substantially met its goals, discuss the effect, if any, changed circumstances may have on the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

If the institution's assessment area(s) are smaller than the boundaries of the multistate metropolitan area, a discussion of the assessment areas examined should be included. Refer to the assessment area discussion, below.

STATE

CRA RATING FOR (Name of State):_____.

[If the institution has branches in more than one state, complete this section for each state. Otherwise, complete the metropolitan area and nonmetropolitan statewide area presentations only, as applicable.]

Summarize the major factors supporting the institution's state rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the state. Discuss how CRA activities in the state were reviewed (using full-scope or limited-scope review). When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of State)*

Describe the institution's operations within the state and the assessment area(s) that it serves. Information that may be important includes: total statewide assets; asset/loan portfolio mix; primary business focus; branching network; any merger or acquisition activity; and a brief description of the assessment areas within the state.

CONCLUSIONS WITH RESPECT TO PERFORMANCE IN *(Name of State)*

Discuss the institution's CRA performance within the state. The facts, data, and analyses that were used to form a conclusion about the rating, based on the institution's plan goals and actual performance under the plan, should be reflected in the narrative. The discussion should be organized around the lending, investment and service goals, as applicable. If the institution has not substantially met its goals, discuss the effect, if any, changed circumstances may have on the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

CONCLUSIONS WITH RESPECT TO PERFORMANCE IN *(Name of Metropolitan Area and State)*

Discuss the institution's CRA performance within the metropolitan area. The facts, data, and analyses that were used to form a conclusion, as well as the institution's record in assessment areas in the metropolitan areas that were examined using a limited-scope review, should be reflected in the performance evaluation. The discussion should be based on the institution's plan goals and actual performance under the plan, and organized around the lending, investment and service goals, as applicable. If the institution has not substantially met its goals, discuss the effect, if any, changed circumstances may have on the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

If the institution’s assessment area(s) are smaller than the boundaries of the metropolitan area, a discussion of the assessment areas examined should be included. Refer to the assessment area discussion, below.

NONMETROPOLITAN STATEWIDE AREAS

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Statewide Area and State)*

Discuss the institution's CRA performance within the nonmetropolitan statewide area. The facts, data, and analyses that were used to form a conclusion, as well as the institution's record in assessment areas in the nonmetropolitan statewide area that were examined using a limited-scope review, should be reflected in the performance evaluation. The discussion should be based on the institution's plan goals and actual performance under the plan, and organized around the lending, investment and service goals, as applicable. If the institution has not substantially met its goals, discuss the effect, if any, changed circumstances may have on the rating. Charts and tables may used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

A discussion of the assessment areas examined using a full-scope review should be included. Refer to the assessment area discussion, below.

ASSESSMENT AREA

(for each assessment area examined using a full-scope review)

Charts or tables may be useful in depicting information throughout the assessment area presentation.

DISCUSSION OF PERFORMANCE IN (ASSESSMENT AREA NAME):
[Repeat for each assessment area.]

STRATEGIC PLAN GOALS AND ACTUAL PERFORMANCE FOR EDEN PRAIRIE AND DAVIS COUNTIES IN MINNESOTA TO OBTAIN SATISFACTORY RATING		
Sample	**Strategic Plan Goal**	**Actual Performance**
	1 . $1.5 million in small farm loans	**1. $1.32 million in loans**
	2. $2.0 million in loans to small businesses	**2. $3.7 million in loans.**
	3. $.5 million in loans to start-up businesses	**3. $.39 million in loans.**
	4. Provide construction/permanent financing for 24-unit elderly low-income housing project	**4. Construction line of credit approved for $960,000. $100,000 disbursed to date.**

Summarize the facts, data, and analyses that were used to form a conclusion on the institution's performance in the assessment area. This should compare and contrast the institution's plan goals for the assessment area and actual performance under the plan. Explain variances between the plan and actual results. If the institution has not substantially met its goals, discuss the performance context and its impact on the conclusion. The discussion should be organized around the lending, investment and service goals, as applicable. Use the chart above to supplement the written summary, and note whether the analysis was conducted using a full-scope review.

ASSESSMENT AREA

(for those assessment areas that were examined using a limited-scope review. Multiple assessment areas within the same multistate metropolitan area, metropolitan area, or nonmetropolitan statewide area and examined using a limited-scope review, may be combined into one presentation.)

Charts or tables may be useful in depicting information throughout the presentation.

DISCUSSION OF PERFORMANCE IN *(Name of Assessment Area)*

Summarize the facts and data that were reviewed and indicate whether the institution's performance in the area reviewed is consistent with the institution's record in the multistate metropolitan area, metropolitan area, or nonmetropolitan statewide area.

APPENDIX A

SCOPE OF EXAMINATION TABLE

Charts that illustrate the scope of the examination may be useful for large institutions with multiple assessment areas or institution's that use data from their affiliates. Charts, such as the ones below, may be used as a supplement to the discussion of the scope or in lieu thereof.

Institution Name
SCOPE OF EXAMINATION:
TIME PERIOD REVIEWED:
PRODUCTS REVIEWED:

LIST OF AFFILIATES AND PRODUCTS REVIEWED		
AFFILIATE(S):	**AFFILIATE RELATIONSHIP:**	**PRODUCTS REVIEWED:**

There is a statutory requirement that the written evaluation of a multistate institution's performance must list the individual branches examined in each state.

LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA:	**TYPE OF EXAMINATION:**	**BRANCHES VISITED:**	**OTHER INFORMATION:**

APPENDIX B

SUMMARY OF STATE AND MULTISTATE METROPOLITAN AREA RATINGS

State or Multistate Metropolitan area Name	State Rating

(This page intentionally left blank.)

SAMPLE WHOLESALE AND LIMITED PURPOSE INSTITUTION EVALUATION*

PUBLIC DISCLOSURE

(Date of Evaluation)

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Name of Depository Institution
Institution's Identification Number

Address of Institution

Name of Supervisory Agency

Address of Supervisory Agency

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

* This table of contents is a sample for a large institution, and should be adjusted, as appropriate, to reflect the requirements of Section 807 of the CRA (12 USC 2906), and each institution's operations.

TABLE OF CONTENTS

I. Institution Rating. 1

a. Overall Rating
b. Discussion

II. Multistate Metropolitan Area Rating. 3

a. Discussion of assessment areas within multistate metropolitan areas examined using a full-scope review
b. Facts and data for multistate metropolitan area assessment areas examined using a limited-scope review

III. State Rating. 5

a. Metropolitan Area Analysis. 7
i. Conclusions
ii. Discussion of assessment areas within metropolitan areas examined using a full-scope review
iii. Facts and data for metropolitan areas examined using a limited-scope review

b. Nonmetropolitan Statewide Area Analysis.. 8
i. Conclusions
ii. Discussions of nonmetropolitan statewide assessment areas examined using a full-scope review
iii. Facts and data for nonmetropolitan statewide assessment areas examined using a limited-scope review

IV. Other Activities 9

V. Appendices
A. Scope of Examination Table 10
B. Summary of State and Multistate Metropolitan Area Ratings 11

INSTITUTION

INSTITUTION'S CRA RATING: This institution is rated _____.

Summarize the major factors supporting the institution's rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs has been identified in the supervisory process, the conclusion must include a statement if the rating was influenced by this evidence. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination. Discuss how CRA activities were reviewed (using full-scope or limited-scope review). Include a description of loan samples used in your analysis. When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION

Write a brief description of the institution. Include relevant information regarding the institution's holding company and affiliates, if any, the states and assessment areas served, the institution's ability to meet various credit needs based on its financial condition and size, product offerings, prior performance, legal impediments and other factors. Other information that may be important includes total assets, asset/loan portfolio mix, primary business focus, branching network, and any merger or acquisition activity.

CONCLUSIONS WITH RESPECT TO PERFORMANCE

Discuss the institution's overall CRA performance. The facts, data and analyses that were used to determine the overall rating should be reflected in the performance evaluation. The narrative should clearly demonstrate how the analyses of each of the performance criteria, and relevant information from the performance context, factored into the overall institution rating. Discuss what effect, if any, community development activities outside of the assessment area(s) and the broader statewide or regional area(s) that includes the institution's assessment area(s) may have on the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution’s performance and reaching conclusions.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Write a paragraph about the institution's record of complying with laws relating to discrimination or other illegal credit practices inconsistent with helping to meet community credit needs using the following guidelines:

> If no substantive violations were found, state that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified. Even if discrimination has not been found, comments related to the institution's fair lending policies, procedures, training programs and internal assessment efforts may still be appropriate.
>
> When substantive violations involving discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified, state that substantive violations were found, whether they caused the CRA rating to be adjusted downward, and why the rating was or was not adjusted. Identify the law(s) and regulation(s) violated, the extent of the violation(s) (e.g., widespread, or limited to a particular office, division, subsidiary, or affiliates) and characterize management's responsiveness in acting upon the issue(s). Discuss whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. State whether management has taken, or has committed to take, corrective action particularly with respect to voluntary corrective action resulting from self-assessment(s).

MULTISTATE METROPOLITAN AREA

CRA RATING FOR (Name of Multistate Metropolitan Area, including State Names)[1]:_____.

[Complete for each multistate metropolitan area where an institution has branches in two or more states within the multistate metropolitan area.]

Summarize the major factors supporting the institution's multistate metropolitan area rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the multistate metropolitan area. Discuss how CRA activities in the multistate metropolitan area were reviewed (using full-scope or limited-scope review). When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of Multistate Metropolitan Area)*

Describe the institution's operations within the multistate metropolitan area, including a description of each of the assessment areas that it serves within the multistate metropolitan area. Indicate how many of these assessment areas were reviewed using a full-scope review.

[1]This rating reflects performance within the multistate metropolitan area. The statewide evaluations are adjusted and do not reflect performance in the parts of those states contained within the multistate metropolitan area.

CONCLUSIONS WITH RESPECT TO COMMUNITY DEVELOPMENT TEST IN *(Name of Multistate Metropolitan Area)*

Discuss the institution's CRA performance within the multistate metropolitan area. The facts, data and analyses that were used to form a conclusion about the rating should be reflected in the performance evaluation. The narrative should clearly demonstrate how the results of the community development test analysis, as well as the institution's record in assessment areas examined using a limited-scope review (located in the multistate metropolitan area), factored into the rating. Support your conclusions with an analysis of facts and data from the assessment areas reviewed using a full-scope review. In addition, include discussions of facts and data for assessment areas reviewed using a limited-scope review when appropriate. Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the multistate metropolitan area. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

STATE

CRA RATING FOR (Name of State)[2]:_____

[If the institution has branches in more than one state, complete this section for each state. Otherwise, complete the metropolitan area and nonmetropolitan statewide area presentations only, as applicable.]

Summarize the major factors supporting the institution's state rating. When evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs have been identified in the supervisory process and were taken into account in the CRA evaluation, the conclusion must include a statement that the rating was influenced by the evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. The conclusion should not mention any technical violations.

SCOPE OF EXAMINATION

Write a short description of the scope of the examination within the state. Discuss how CRA activities in the state were reviewed (using full-scope or limited-scope review). When appropriate, you may also refer the reader to a chart similar to that included in Appendix A.

DESCRIPTION OF INSTITUTION'S OPERATIONS IN *(Name of State)*

Describe the institution's operations within the state and the assessment area(s) that it serves. Information that may be important includes: total statewide assets; asset/loan portfolio mix; primary business focus; branching network; any merger or acquisition activity; and a brief description of the assessment areas within the state.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of State)*

Discuss the institution's CRA performance within the state. The facts, data and analyses that were used to form a conclusion about the rating should be reflected in the performance evaluation. The narrative should clearly demonstrate how the analyses of the performance

[2]For institutions with branches in two or more states in a multistate metropolitan area, this statewide evaluation is adjusted and does not reflect performance in the parts of those states contained within the multistate metropolitan area. Refer to the multistate metropolitan area rating and discussion for the rating and evaluation of the institution's performance in that area.

criteria factored into the rating. Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

METROPOLITAN AREAS

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Metropolitan Area and State)*

Discuss the institution's CRA performance within the metropolitan area, including a description of the assessment area(s) that it serves within the metropolitan area. The facts, data and analyses that were used to form a conclusion should be reflected in the performance evaluation. The narrative should clearly demonstrate how the analyses of the performance criteria factored into the metropolitan area conclusion. Support your conclusions with an analysis of facts and data across geographies and demographic groups in the assessment areas reviewed using the examination procedures. Discuss any additional facts and data considered.

Additionally, discuss the institution's record in assessment areas examined using a limited-scope review (located in a metropolitan area). Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the metropolitan area. Support your conclusions with appropriate facts and data.

Charts and tables may used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

NONMETROPOLITAN STATEWIDE AREAS

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS IN *(Name of Nonmetropolitan Area and State)*

Discuss the institution's CRA performance within the nonmetropolitan statewide area, including a description of the assessment area(s) that it serves within the nonmetropolitan statewide area. The facts, data and analyses that were used to form a conclusion should be reflected in the performance evaluation. The narrative should clearly demonstrate how the analyses of the performance criteria factored into the conclusion for the nonmetropolitan statewide area. Support your conclusions with an analysis of facts and data across geographies and demographic groups in the assessment areas reviewed using the examination procedures. Discuss any additional facts and data considered.

Additionally, discuss the institution's record in assessment areas examined using limited-scope review (located in the nonmetropolitan statewide area.) Indicate whether the institution's performance in the assessment areas reviewed using a limited-scope review is consistent with the institution's record in assessment areas reviewed using a full-scope review in the nonmetropolitan statewide area. Support your conclusions with facts and data as appropriate.

Charts and tables may be used to summarize and effectively present the most critical or informative data used by the examiner in analyzing the institution's performance and reaching conclusions.

OTHER ACTIVITIES

If a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), qualified investments, community development loans, or community development services that benefit areas outside of the institution's assessment area(s) and the broader statewide or regional area(s) that includes the institution's assessment areas may be considered. If the activities considered were not sufficient to raise the rating of the institution from an overall satisfactory to an outstanding, this section need only contain a statement that other activities were considered but did not affect the overall rating of the institution.

Charts or tables may be useful in depicting information throughout the presentation.

SUMMARY OF INSTITUTION'S OTHER COMMUNITY DEVELOPMENT ACTIVITIES

Summarize the institution's community development activities outside its assessment area(s) and the broader statewide or regional area(s) that includes the institution's assessment area(s). Include number, volume, and types of community development loans, qualified investments, and community development services.

DISCUSSION OF PERFORMANCE IN OTHER COMMUNITY DEVELOPMENT ACTIVITIES

Summarize the institution's performance in other community development activities. The narrative should demonstrate how these activities influenced the overall rating for the institution.

APPENDIX A

SCOPE OF EXAMINATION TABLE

Charts that illustrate the scope of the examination may be useful for large institutions with multiple assessment areas or institutions that use data from their affiliates. Charts, such as the ones below, may be used as a supplement to the discussion of the scope or in lieu thereof.

Institution Name
SCOPE OF EXAMINATION:
TIME PERIOD REVIEWED:
PRODUCTS REVIEWED:

LIST OF AFFILIATES AND PRODUCTS REVIEWED		
AFFILIATE(S):	**AFFILIATE RELATIONSHIP:**	**PRODUCTS REVIEWED:**

There is a statutory requirement that the written evaluation of a multistate institution's performance must list the individual branches examined in each state.

LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA:	**TYPE OF EXAMINATION:**	**BRANCHES VISITED:**	**OTHER INFORMATION:**

APPENDIX B

SUMMARY OF STATE AND MULTISTATE METROPOLITAN AREA RATINGS

State or Multistate Metropolitan Area Name	State Rating

(This page intentionally left blank.)