

**Compliance Hot Topics**

Sponsored by the FDIC  
Kansas City Region  
November 30, 2010

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**Email Questions to:**

[kcconferencecall@fdic.gov](mailto:kcconferencecall@fdic.gov)

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**Secure and Fair Enforcement for Mortgage  
Licensing Act of 2008 (SAFE Act)**

Effective October 1, 2010

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## SAFE Act

- The SAFE Act is intended to improve the accountability and tracking of residential mortgage loan originators (MLOs), provide protection for consumers, reduce fraud, and provide consumers with information regarding MLOs.
- Institutions are expected to implement appropriate policies and procedures to ensure compliance.

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## SAFE Act

- Requires individual mortgage loan originators (MLOs), employed by a federally-insured depository institution or its subsidiaries, to register with the Nationwide Mortgage Licensing System & Registry (NMLS)
- Must register within 180 days of the date the FDIC provides public notice of the availability of the registry.

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## SAFE Act – Institution Obligations

- Develop Policies and Procedures
- Identify Your Institutions NMLS System Administrator
- Identify Mortgage Loan Originators (MLOs)
- Watch for Announcements from FDIC and NMLS

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### SAFE Act – Policies and Procedures

- Institutions must adopt and follow written policies and procedures that are appropriate to the nature, size, complexity, and scope of the bank's mortgage lending activities and must, at a minimum, include nine specified provisions.

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### SAFE Act – Policies and Procedures

1. Identification of MLOs
2. Inform MLOs of registration requirements
3. Procedures to comply with unique identifier requirements
4. Confirm the adequacy and accuracy of registrations, including updates and renewals
5. Tracking system for monitoring compliance

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### SAFE Act – Policies and Procedures

6. Provide for independent testing at least annually
7. Provide for disciplinary action for failing to comply
8. Establish process for reviewing criminal background reports
9. Ensure third parties have policies and procedures to comply with SAFE Act

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## SAFE Act – System Administrator

- Each institution will establish a “base” record in the Registry. Once the Registry is available, institutions will need to request an account and establish at least one Account Administrator to handle the administrative processes.
- Administrator should not be an MLO

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## SAFE Act – Identification of MLO

- An MLO means an individual who:
  - 1) takes a residential mortgage loan application; **AND**
  - 2) offers or negotiates terms of a residential mortgage loan for compensation or gain.
- A residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling, including manufactured housing and condominiums
- Includes refinancings, reverse mortgages, home equity lines of credit, and other first and second lien loans that meet the definition of a residential mortgage loan

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## SAFE Act

- The term MLO does not include:
  - 1) an individual who performs purely administrative or clerical tasks on behalf of a MLO (the receipt, collection, distribution, and communication with a consumer to obtain information necessary for the processing or underwriting of a loan;
  - 2) an individual who is licensed as a real estate agent or broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or loan originator or by any agent of such entity.
  - 3) an individual or entity solely involved in extension of credit related to time share plans.

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## SAFE Act

- For example, taking a loan application includes receiving information provided in connection with a request for a loan to be used to determine whether the consumer qualifies for a loan, even if the employee

1) receiving consumer's information indirectly in order to make an offer or negotiate a loan,

2) is not responsible for further verification of the information,

3) inputs the information in an online application or other automated system on behalf of the consumer, or

4) is not engaged in the approval of the loan, including determining whether the consumer qualifies for the loan.

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## SAFE Act

- For example, taking an application does not include

1) Contacting a consumer to verify information in the loan application by obtaining documentation such as tax returns or payroll receipts;

2) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel;

3) Assisting a consumer who is filling out an application by clarifying or explaining what type of information or criteria is necessary to obtain a loan product.

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## SAFE Act

- For example, offering or negotiating terms of a loan includes

1) Presenting a loan offer either verbally or in writing, including but not limited to, providing a TIL disclosure, even if the offer is conditional, further verification is necessary, or other individuals must complete the loan process

2) Responding to a consumer's request for a lower rate or points by presenting the consumer either verbally or in writing a revised loan offer that includes a lower interest rate or lower points than originally offered

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## SAFE Act

- For example, offering or negotiating terms of a loan does not include
  - 1) providing general explanations or descriptions in response to consumer queries regarding qualification for a specific loan product;
  - 2) arranging the loan closing or other aspects of the loan process, provided that communication with the consumer only verifies loan terms already offered or negotiated; or
  - 3) making an underwriting decision about whether the consumer qualifies for a loan.

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## SAFE Act - De Minimis Exception

- A De Minimis exception is available for individuals who do not regularly or principally function as a MLO employed by an institution
- Registration is not required for individuals who act as a MLO for five or fewer residential mortgage loans during the last twelve months. Must register before this limit is exceeded
- Institutions are prohibited from acts or practices that evade the limits of de minimis exception by structuring this exception to apply to multiple employees who each would not meet the exception threshold for registration

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## SAFE Act - Registration

- A public announcement of the date the Registry will begin accepting registrations will be made sometime in 2011
- An employee who acts as a MLO is required to register with the Registry, obtain a unique identifier, and maintain his or her registration, unless the employee qualifies for the de minimis exception
- Employees must complete an initial registration with the Registry within 180 days from the date the FDIC provides in a public notice that the Registry is accepting registrations, and are allowed to continue to originate residential mortgage loans during this period

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## SAFE Act - Registration

- An institution must require its employees to register and maintain this registration, and are not permitted to allow their employees to act as an MLO unless registered with the Registry
- After the 180 day period expires, existing and newly hired employees are prohibited from originating residential mortgage loans without first registering
- A MLO's failure to register does not affect the validity or enforceability of any mortgage loan contract made by the institution that employs the originator

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## SAFE Act - Registration

The Registry must be furnished with information concerning the MLOs identity, including but not limited to:

- Name, address, contact information, prior financial services-related employment, social security number, gender, date of birth, information concerning final criminal actions, financial services-related civil judicial actions and professional license revocations or suspensions, fingerprints for submission to the FBI and any other relevant governmental agency for a criminal history background check

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## SAFE Act – Registration Renewal

- A registered MLO must renew his or her registration with the Registry annually during November 1<sup>st</sup> through December 31<sup>st</sup> of each year
- Failure to renew prohibits the employee from acting as a MLO and the registration becomes inactive until such time the registration requirements are met, which can be done at any time during the year
- Annual registration renewal requirements do not apply if a MLO just completed registration less than six months prior to December 31<sup>st</sup>

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## SAFE Act - Registration

- Registration must be updated within 30 days of the occurrence of the following events:
  - 1) a change in the employee's name,
  - 2) the registrant ceases to be an employee of the institution
  - 3) any of the employee's responses to the information required for registration become inaccurate.
- A previously registered employee is required to maintain his or her registration unless the employee is no longer a MLO, even if, in any subsequent 12 month period, the employee originates fewer mortgage loans than the number specified in the de minimis exception provision

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## SAFE Act – Licensing vs. Registration

- **State-Licensed MLOs (Real-Estate Brokers, Agents, etc.)**
  - Education Requirement
  - Termination information
  - Credit Report

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## SAFE Act – Proposed Fees

Registered Mortgage Loan Originator Fees		
	Completed between January 1 and June 30	Completed between July 1 and December 31
Initial Registration	\$30	\$60
Annual Registration Renewal	\$30	Not applicable in initial calendar year; \$30 thereafter
Change In Employment	\$30 (subject to \$30 annual renewal fee in the same calendar year)	
<b>Criminal Background Check</b>		
Electronic Prints	\$30	
Paper Prints	\$40	
<b>Employing Institution Fees</b>		
Initial Institution Base Record Filing	\$100	
Annual Institution Base Record Renewal	\$100	
Two-Factor Authentication Annual Subsequent	\$70	

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## SAFE Act - Examination

- Confirm the institution maintains a list of the registration numbers of its MLOs, and provides the registration number to any loan applicant that requests it.
- In satisfying this requirement, a institution may choose to:
  - direct consumers to a listing of registered MLOs and their registration numbers on its website;
  - post this information in a prominently publicly accessible area, such as a lobby or lending area notice; and/or
  - establish a process that bank personnel provide the registration number to consumers upon request.

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## SAFE Act - Examination

- Confirm that a registered MLO provides his or her unique identifier to a consumer
  - upon request;
  - before acting as a MLO; and
  - through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

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## SAFE Act - Resources

- FFIEC website**
- <http://www.ffiec.gov/safeact.htm>
- FIL-64-2009**
- <http://www.fdic.gov/news/news/financial/2009/fil09064.html>
- FDIC website**
- <http://www.fdic.gov/regulations/laws/safe/index.html>
- Federal Register**
- <http://www.fdic.gov/regulations/laws/federal/2010/10FinalAug23.pdf>
- Registry website**
- <http://mortgage.nationwidelicencingsystem.org/Pages/default.aspx>

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**Privacy of Consumer Financial  
Information- Model Notice**

Effective January 1, 2011

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**Privacy-New Model Notice**

- Announced in FIL 65-2009
- Use is Voluntary
- Sample Clauses in Part 332 will be Eliminated
- Safe Harbor
- Online Form Builder Available

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**Model Privacy Notice**

- Standardized form, including page layout, content, style, pagination, and shading.
- Two pages, which may be printed on both sides of a single sheet of paper
- May extend to a third page under certain circumstances

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## Model Privacy Notice - Modifications

- Easily readable font – 10 point – Spacing
- May include a logo
- Portrait orientation
- Size sufficient to meet layout requirements
- White space
- White or light colored paper, black or contrasting ink
- May be translated into other languages

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## Model Privacy Notice - Completion

- Compliance Guide issued by FDIC in FIL-60-2010
- May be provided by the institution or group of affiliated institutions
- Revision date – upper right hand corner
- Other Important Information Box may only be used for State privacy law information and/or acknowledgement of receipt form

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## Privacy Notice - Resources

### Compliance Guide FIL-60-2010

- <http://www.fdic.gov/news/news/financial/2010/fil10060.html>

### Privacy Final Rule FIL-65-2009

- <http://www.fdic.gov/news/news/financial/2009/fil09065.html>

### Federal Register Final Rule

- <http://edocket.access.gpo.gov/2009/pdf/E9-27882.pdf>

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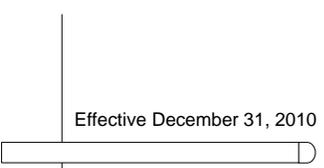
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**Deposit Insurance Coverage**

Effective December 31, 2010



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**Temporary Unlimited Coverage for Noninterest-Bearing Transaction Accounts**

- Dodd-Frank Wall Street Reform and Consumer Protection Act
- Separate coverage
- Effective 12/31/2010 - 12/31/2012
- Similar to Transaction Account Guarantee Program (TAG) under the Temporary Liquidity Guarantee Program (TLGP)

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**Deposit Insurance Coverage - Notice Requirements**

- Main office, each branch, and on website
- TAG participants must notify NOW account and IOLTA accountholders
- Notify customers of any action taken by bank that would affect the coverage of funds

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Deposit Insurance Coverage - References

**Final Rule FIL**

- <http://www.fdic.gov/news/news/financial/2010/fil10076.html>

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**Fair Credit Reporting -  
Risk-Based Pricing Notice**

Effective January 1, 2011

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**Fair Credit Reporting –  
Risk-Based Pricing**

The bank must provide a risk-based pricing notice if:

- A consumer report is used in connection with an application for, or a grant of, credit to the consumer; and
- Based in whole or in part on the consumer report, the bank grants credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers “from or through” the bank.

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## Fair Credit Reporting – Risk-Based Pricing

### Definitions

#### "Material terms"

- Annual Percentage Rate (APR) both for open-end and closed-end loans
  - Does not include a "teaser" rate, penalty rate, or fixed APR option for a home equity line of credit
- Financial term (loans with no APR)
  - Such as an annual membership fee or deposit

#### "Materially less favorable"

- Terms granted to one consumer are significantly greater than the cost of credit granted to others

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## Fair Credit Reporting – Risk-Based Pricing

### Scope

- Consumer's personal, household, or family purposes
- Also applies to account reviews of credit

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## Fair Credit Reporting – Risk-Based Pricing

### Identifying Consumers

- Risk-Based Pricing Notices
  - Case-by-Case
  - Credit Score Proxy
  - Tiered Pricing
- Exception Notices

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**Fair Credit Reporting –  
Risk-Based Pricing**

Three Exception Notices:

- Loans Secured by Residential Property
- Other Loans (not Secured by Residential Property)
- Credit Score Not Available

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**Fair Credit Reporting –  
Risk-Based Pricing**

Case-by-Case Method

Compare the material terms offered to each consumer and those offered to other consumers for a specific type of credit.

A risk-based pricing notice would be provided to those customers who received material terms that are materially less favorable than terms other consumers have received from the bank.

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**Fair Credit Reporting –  
Risk-Based Pricing**

Credit Score Proxy Method

Set a cutoff score that represents a point where 40% of your customers have higher credit scores and 60% have lower credit scores.

A risk-based pricing notice would be provided to those consumers whose credit score is lower than the cutoff score.

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## Fair Credit Reporting – Risk-Based Pricing

### Credit Score Proxy Method (continued)

Cut off scores for new creditors, new products, or new to risk-based pricing are flexible.

Cut off scores for multiple scores should be similar to the evaluation of multiple scores.

A notice must also be provided to borrowers who don't have a score.

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## Fair Credit Reporting – Risk-Based Pricing

### Tiered Pricing Method

Customers are placed within one or a discrete number of pricing tiers for a specific type of credit

- One to Four Tiers: A risk-based pricing notice to each customer who does not qualify for the top or lowest-priced tier
- Five or More Tiers: A risk-based pricing notice to each consumer who does not qualify for the top two tiers or any other tiers that comprise no less than 30% and no more than 40% of the tiers

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## Fair Credit Reporting – Risk-Based Pricing

### Credit Card Issuers

Multiple-Rate Offers: A risk-based pricing notice must be provided to consumers who apply for a credit card and get an APR higher than the lowest APR available in connection with the offer

Account Reviews: A risk-based pricing notice must be provided if the bank increases the APR as a result of information from the consumer's credit report

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## Fair Credit Reporting – Risk-Based Pricing Notice

### Model Forms

- B-1: Case-by-Case, Credit Score Proxy, and Tiered Pricing Methods
- B-2: Account Reviews
- B-3: Exception Notice for 1-4 family residential property
- B-4: Exception Notice for all other consumer loans
- B-5: No Credit Score Available

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## Fair Credit Reporting – Risk-Based Pricing Notice

### Timing

- Closed-End Credit- Before consummation but not earlier than the credit decision
- Open-End Credit- Before the first transaction but not earlier than the credit decision
- Account Review- At the time the APR is communicated to the consumer

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## Fair Credit Reporting – Risk-Based Pricing Notice

### Notice Requirements

- Original Creditor to provide
- Clear and conspicuous
- Can be provided in oral, written, or electronic form
- Same address = 1 notice

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**Fair Credit Reporting –  
Risk-Based Pricing**

Exceptions

Consumer applies for specific material terms and is granted those terms

Consumer receives an adverse action notice under section 615(a)

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**Fair Credit Reporting –  
Risk-Based Pricing**

Free Credit Report

- A consumer who receives a risk-based pricing notice has a right to a separate free consumer report upon receipt of a risk-based pricing notice
- Exception notices are not risk-based pricing notices and do not give the right to receive a free credit report

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**Fair Credit Reporting –  
Risk-Based Pricing Reference**

Federal Register

- [http://www.federalreserve.gov/reportforms/formreview/ReqV\\_20100115\\_ffr.pdf](http://www.federalreserve.gov/reportforms/formreview/ReqV_20100115_ffr.pdf)

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**Truth in Lending –  
Loan Originator Compensation and  
Steering**

Section 226.18  
Effective April 1, 2011

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**Truth in Lending –  
Loan Originator Compensation and Steering**

All persons who originate loans, including

- Mortgage brokers and the companies that employ them
- Loan officers employed by depository institutions and other lenders

• Closed-end loans secured by a consumer's dwelling

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**Truth in Lending –  
Loan Originator Compensation and Steering**

Prohibitions

- Payments to the loan originator that are based on the loan's interest rate or other terms
- Mortgage broker or loan officer from receiving payments directly from a consumer while also receiving compensation from the creditor or another person
- Originator from steering a consumer to a lender offering less favorable terms in order to increase the broker's or loan officer's compensation

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**Truth in Lending –  
Loan Originator Compensation and Steering**

A transaction is covered by the safe harbor if:

- The consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest; and

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**Truth in Lending –  
Loan Originator Compensation and Steering**

- The loan options presented to the consumer include the following:

- (1) The lowest interest rate for which the consumer qualifies;
- (2) The lowest amount for points and origination fees; and
- (3) The lowest rate for which the consumer qualifies for a loan with no risky features

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**Truth in Lending –  
Loan Originator Compensation and Steering**

The Dodd-Frank Wall Street Reform and Consumer Protection Act:

- Also restricts practices concerning loan originator compensation
- Includes provisions similar to the Federal Reserve's final rules

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**Truth in Lending –  
Loan Originator Compensation and Steering**

Federal Register

- <http://edocket.access.gpo.gov/2010/pdf/2010-22161.pdf>

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**Truth in Lending –  
Mortgage Disclosure Improvement  
Act of 2008**

Section 226.36  
Effective January 30, 2011

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**Truth in Lending –  
Mortgage Disclosure Improvement Act of 2008  
(MIDA)**

Purpose

- Ensure that mortgage borrowers are alerted to the risks of payment increases before they take out mortgage loans with variable rates or payments

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Truth in Lending – MIDA

Disclosures must include a payment summary in the form of a table, stating:

- The initial interest rate together with the corresponding monthly payment;
- For adjustable-rate or step-rate loans, the maximum interest rate and payment that can occur during the first five years and a "worst case" example showing the maximum rate and payment possible over the life of the loan; and

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Truth in Lending – MIDA

Disclosures must include a payment summary in the form of a table, stating: (continued)

- The fact that consumers might not be able to avoid increased payments by refinancing their loans

Lenders also must disclose certain features, such as balloon payments, or options to make only minimum payments that will cause loan amounts to increase

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Truth in Lending – MIDA

Applications received for closed-end mortgage loans on or after January 30, 2011

May provide disclosures that comply with the interim rule before that date

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Truth in Lending – MIDA

Federal Register

- <http://edocket.access.gpo.gov/2010/pdf/2010-20663.pdf>

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Frequently Cited Violations

- August 1, 2010 – November 12, 2010
- Kansas City Region
- Approximately 100 Examinations

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Frequently Cited Violations

- **Home Mortgage Disclosure Act**
  - Data integrity errors
  - Collection of Government Monitoring Information (GMI)
- **Flood Insurance**
  - Late or missing flood determinations
  - Failure to Provide Notice of Flood Hazard Area
  - Inadequate Flood Insurance Coverage

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## Frequently Cited Violations

- **Real Estate Settlement Procedures (RESPA)**

- Late or missing GFEs
- Providing the servicing disclosure
- Completion of the GFE and HUD

- **Truth in Savings**

- Inconsistent terminology

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## Frequently Cited Violations

- **Truth in Lending**

- Not taking appropriate action on Higher-Priced Mortgage Loans (HPMLs)
- Balance computation method for non home-secured open-end credit
- Not listing the security interest in the Fed box

- **Homeownership Counseling**

- Not providing the Servicemember Civil Relief Act Notice

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## Frequently Cited Violations

- **Fair Credit Reporting Act**

- Credit score disclosure

- **Expedited Funds Availability**

- Check processing consolidation

- **Equal Credit Opportunity Act**

- Monitoring information

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